

September 13, 2005

James Carr
Project Manager
The Middlesex Corporation
10801 Cosmonaut Blvd.
Orlando, Florida 32824

Lawrence G. Zagardo P.E.
Senior Project Engineer
Jacobs Civil Inc.
6010 Sunshine State Parkway
Orlando, Florida 32839

RE: Fin 406091-52-01/Contract No. E8F78
Florida Turnpike (SR 91) Orlando South to Interstate 4 / Orange County
DRB Hearing for August 31, 2005 for the Removal of the existing Gravity Walls at
Oakridge Road

Gentlemen,

The Board having heard the oral presentation of the positions of the parties with
Regard to Entitlement of Time and Money for removal of the Gravity Walls on
Oakridge Road and after review of the Plans, Standard Specifications, Supplemental
Specifications, Contract, and consultation as to the Issue the Board finds as follows:

Contractor's Position:

Summary

The new construction at the above-referenced project required the removal of four each existing concrete gravity walls on Oakridge Road. The walls were approximately 3 feet high with a combined length totaling 1,955 feet.

The Contractor's position is that the existence of the gravity walls constitutes a Differing Site Condition and that the cost of the removal thereof should be compensated by an adjustment to the Contract. The Engineer has denied the Contractor's request for extra compensation.

The plans do not show the gravity walls, nor do they call-out the removal of the gravity walls. Not only do the plans not show the gravity walls, more importantly, the cross sections show that the walls do not exist.

The walls are mostly buried underground, and the Contractor did not see them during his pre-bid site investigation. From the road, the walls appeared to be merely a thickened sidewalk edge or small footing to support the existing pedestrian handrail. There did not appear to be a large enough drop-off to require a retaining wall. Because the walls were not depicted on the plans, the Contractor had no reason to look for them during his pre-bid site investigation.

The Contractor finally found the walls when he started working in the area and immediately notified the Engineer that he discovered unforeseen work.

Again, the Contractor's position is that the existing gravity walls and the removal thereof should have been shown on the plans as so many other removals are. Detecting these hidden and partially buried walls, when one is not specifically looking for them because the plans show that they should not be

there, would have required an unreasonable site investigation considerably more extensive than normally performed prior to bidding.

Relevant Factual Information

- *Exhibit A¹—TMC Letter No. 2031-029, dated May 17, 2005. Notice of Unforeseeable Work—Removal of Existing Gravity Walls on Oakridge Road.*
- *Exhibit B—Section 2-4 of the Standard Specifications—Examination of Plans, Specifications, Special Provisions and Site of Work. ‘Examine the Contract Documents and the site of the proposed work carefully before submitting a proposal for the work contemplated. Investigate the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished and as to the requirements of all Contract Documents’*
- *Exhibit C—Typical Sections, Sheets No. 14, 15, and 16. The typical sections do not show existing concrete gravity walls or the removal thereof.*
- *Exhibit D—Summary of Quantities, Sheet No. 21. The Pay Item Footnotes for Item 110-1-1 note that the cost of removing the existing guardrail and posts as well as the cost of sawcutting existing pavement is included in Clearing and Grubbing. There is no mention of the cost of removing the existing concrete gravity walls.*
- *Exhibit E—Oakridge Road Plans, Sheets No. 100, 101, and 102. There is no mention of the existing concrete gravity walls, or the removal thereof. The existing guardrail (to be removed) is shown. The existing sidewalk is shown, and the removal thereof is implied by the note ‘sawcut match existing’ The existing pedestrian handrail is not shown on the plans but was clearly visible at the site.*
- *Exhibit F—Cross Sections Oakridge Road, Sheets No. 401 through 410. The existing sidewalks are clearly shown, but the existing concrete gravity walls are not shown. Furthermore, the existing ground lines do not show drop-offs that could in any way imply the existence of retaining walls. The incorrect existing ground lines on the cross sections, alone, constitute a Differing Site Condition.*

The existing concrete gravity walls in question are completely and totally absent from the contract drawings. In addition, the walls are mostly buried and face away from the roadway, making them difficult to see. The Contactor had no reason to look for the walls or even to know that he should look for them during his pre-bid site investigation.

Contractual Justification

- *Exhibit G - Section 4-3.7—Differing Site Conditions—of the Standard Specifications states that if subsurface or latent physical conditions encountered at the site, differing materially from those indicated in the Contract, cause an increase in cost or time, an adjustment will be made.*

Department’s Position:

In a letter from The Middlesex Corporation (TMC) dated May 17th, 2005, TMC requested additional compensation in the amount of \$69,587.91 for the removal of gravity wall in the vicinity of the Oakridge Road Bridge over the Florida Turnpike (4 quadrants of the bridge - 2 approaches and 2 departures). TMC believes this to be an unforeseen condition and justification to entitlement.

It is the position of Jacobs CEI that this is a bidding issue rather than an unforeseen condition.

After doing further research (feedback from the EOR and discussions with other professionals in the business), it became apparent the correct way to pay for the gravity wall removal is through the clearing and grubbing pay item. Specification 110-1 for Clearing and Grubbing states "Remove and dispose of all trees ... structures, appurtenances ... and other facilities necessary to prepare the area for the proposed construction". Since the correct pay item is in the contract, this

¹ See original position papers for exhibits.

issue becomes a question of how a contractor would know that this work would be covered under the clearing and grubbing pay item.

This issue appears to come down to what is typically required of designers in terms of identifying items to be included as part of clearing and grubbing versus the obligation of the contractor(s) to perform a site visit in accordance with Specification 2-4. This can be taken a step further. Is it more reasonable for the designer to identify and address every item to be included under clearing and grubbing item or should the contractor's site review and expertise preside over where the obligation falls especially in regards to items that can be reasonably seen and identified in a site investigation.

If after the field review and/or an examination of the contract documents, bidding questions arise in the mind of the contractor, these questions should be directed to the Turnpike/FDOT for clarification prior to bidding. TMC has stated that they did not identify the gravity wall removal and therefore did not include these costs in their bid. However, just because a contractor fails to include some work component in their bid should not lead to the conclusion that there is entitlement.

In further discussions with the EOR for this project, it was stated that in general they don't typically call out items to be removed such as curb, sidewalk, separators, etc. The intent is to have contractor's perform a site visit before submitting a bid in accordance with the specifications, so contractors may include items like the one in question in their bid. Specification 2-4 states, "Examine the contract documents and the site of the proposed work carefully before submitting a proposal for the work contemplated".

With this specification in mind, attached are photographs of the site for the item in question. A number of these photos clearly show expansion material separating the sidewalk from the concrete section that supports the aluminum handrail, which would clearly demonstrate that this was more than a thickened edge of sidewalk supporting the handrail. Some of these photos were taken from a slow moving vehicle and the expansion material or a separation between the sidewalk and wall can be seen from some of these views, but these shots cannot fully do justice to the field site conditions. However, we feel the intent of the specification to "carefully examine the site" goes beyond more than just a drive through of the project site especially in the area of a structure removal such as the Oakridge Bridge. If a walk through in this area was conducted, we feel the presence of the gravity wall would have become apparent. At that time (Pre-bid), the contractor should have approached the Turnpike if there was a question regarding payment for this work and/or it should have been included as part of the bid for clearing and grubbing.

We conclude that this portion of the work is covered in the contract under the clearing and grubbing pay item in conjunction with Specification 2-4 and the obligation is with the contractor to include the costs for this work in their bid. Therefore, there is no entitlement for additional payment.

Board Recommendation:

- Both parties agree that this is not a foundation for the handrail, but is in fact a handrail mounted on top of a gravity wall.
- Both parties agree the walls had to be removed, at least partially because of other work in the same area occupied by the walls
- From the roadway, expansion material is clearly visible between the sidewalk and the concrete under the rail. Further, it is apparent that there is a drop-off outside the handrail. Looking from the opposite direction (albeit one would have to dismount from a vehicle); at the side of the embankment a concrete wall is visible. This would indicate the necessity of having a closer look at the item
- The Contractor stated the Gravity Walls were approximately 3 foot in height and a combined length of 1,955 linear feet.

- The Contractors Position is: Plans do not show the Gravity Walls, nor do they call out the removal of the Walls and most important the cross sections show that the walls do not exist.
- The Contractor states “From the road, the walls appeared to be merely a thickened sidewalk edge or small footing to support the existing pedestrian handrail.” Therefore it appears the Contractor allowed for some removal cost of the handrail support footing.
- The existing project plans call for new rail support to be 1 foot in depth.
- The FDOT Plans Preparation Manual Volume II, Roadway Design Office Tallahassee, Florida, Dated 2003 Fourth Edition Updated January 1, 2005 provides:

Introduction

Plans Preparation Manual, Volume II

Purpose:

This Plans Preparation Manual, Volume II sets forth requirements for the preparation and assembly of contract plans for Florida Department of Transportation (FDOT) projects. The information Contained herein applies to the preparation of contract plans for roadways and structures.

Chapter 10

Roadway Plan and Roadway Plan-Profile

10.2 Roadway Plan Portion

10.2.3 Existing Topography

***All existing** topography shall be shown. Existing roads, streets, drives, buildings, underground and overhead utilities, **walls**, curbs, pavements, fences, railroads, bridges, drainage structures and similar items **shall be plotted** and labeled. Streams, ponds, lakes, wooded areas, ditches, and all other physical features shall be shown*

10.2.7 Plan Layout

*4. Curb, curb and gutter, traffic separators, sidewalk, curb ramps, **retaining walls, etc. shall be shown.** Driveways shall be shown as required by Volume I, Section 1.8.*

Chapter 18

Roadway Cross Sections

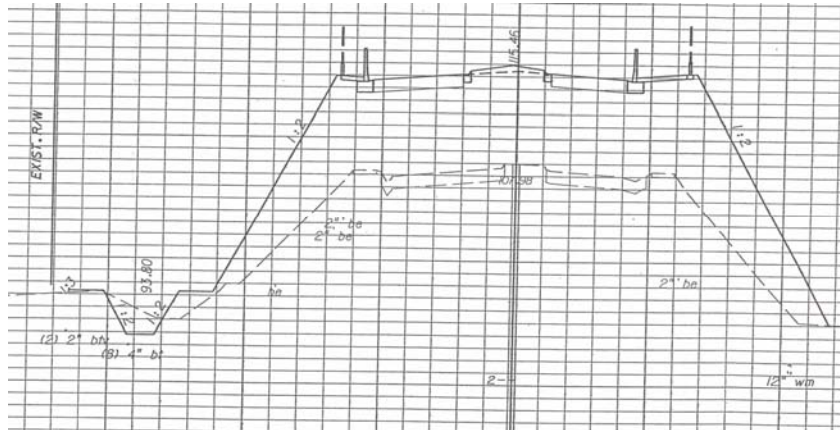
18.1 General

***Cross sections depict** the existing ground conditions, including **all manmade features**, as sections perpendicular to the respective stations along a survey baseline or construction centerline. The proposed cross-sectional outline of the new facility with its functional elements is also shown on cross sections.*

18.2 Required Information

*Existing ground lines shall be shown and the existing elevations at the centerline shall be noted just below the ground line at the centerline. The station number of the section shall be indicated opposite the ground line on the right side of the sheet and location baseline of survey should show station equivalencies to the baseline survey. **The surface, as well as the below ground portions of existing features** such as pavements, curbs, and sidewalks, **shall be shown.***

The cross-sections do not show the existing gravity wall. It does depict that the embankment extends from the top to the toe and not intersecting with any wall or footer.



It is the Board's opinion that, at this location, the Contractor made a reasonable pre-bid site investigation. He had an expectation that the plans would be prepared in the standard manner on which he could rely. Had the plans depicted the walls, he would have had a duty to investigate (to the extent possible) their length and depth.

Based on the materials supplied to the Board and presentations to the Board at the DRB hearing, the Board finds entitlement of the Middlesex Corporation to additional compensation for the removal of the gravity wall to the extent exceeding the removal of a normal handrail footer.

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

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 an acceptance of this recommendation by the non-responding party.

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

Respectfully submitted,

Dispute Review Board

Dallas L. Wolford Chairman
John H. Duke, Sr.
Charles C. Sylvester, Jr. P.E.

Signed for and with Concurrence of all Members

Dallas L. Wolford Chairman