

DISPUTE REVIEW BOARD RECOMMENDATION

June 15, 2000

FAXED June 15, 2000

Paul F. Kirchman, P. E.
Project Resident Engineer
Beiswenger, Hoch and Associates, Inc.
261 Anderson Snow Road
Brooksville, Florida 34609
Fax (352) 799-6193

Mr. Eric M. Sims
Brooksville Area Manager
D.A.B. Constructors, Inc.
P.O. Box 1589
Inglis, Florida 34449
Fax (352) 447-4133

RE: State Road 589
Suncoast Parkway Section 4A & 4B
Pasco and Hernando Counties
State Project No.: 97140-3303 and 37080-3300
FIN 258957 1 52 01 And 258904 1 52 01
Disputes Review Board

Subject: Issue No. 1 – Topsoil Delay

Dear Sirs:

The Owner, Florida Department of Transportation (Department), and the Contractor, D.A.B. Constructors, Inc. (DAB), requested a hearing to determine **entitlement** of DAB to **additional compensation and contract time for the topsoil requirements** on the above referenced project. Should entitlement be established, the DRB was not to decide the quantum of such entitlement at this time, as the parties would attempt to negotiate the value of entitlement.

Pertinent issues, correspondence and other information relating to the Department's and the Contractor's positions were forwarded to this Disputes Review Board (DRB) for review and discussion at the hearing that was held on May 31, 2000.

ISSUE:

According to the Contractor there are three key questions in this issue:

1. *Should information contained in the plans be relied on by the Contractor to estimate the cost and determine the means and methods of construction for a contract bid item?*
2. *Is the Department responsible for incorrect information given in the plans when the Contractor relied on and used this information to estimate his cost and determine his means and methods of construction of a bid item?*
3. *Did the Department direct the Contractor to alter his planned means and methods of construction without following the specifications to determine if the material was out of tolerance?*

CONTRACTOR'S POSITION:

On April 29th, 1998 D.A.B. submitted a bid to the Florida Department of Transportation for the Suncoast Expressway Section 4, FDOT Project Number 97140-3303, 97140-3307, 97080-3000, & 97080-3303. D.A.B. was

DISPUTE REVIEW BOARD RECOMMENDATION

the lowest responsive bidder and received a contract from the State to construct the project for \$27,864,282.37 based on the contract unit prices for the quantities provided in the bid package. All contract unit prices were based on the information provided at the time of bid by the Department in the Plans, Specifications, and the Pre-bid Conference.

D.A.B.'s contract unit price for Item 162-2, Topsoil, was \$0.11 per Square Yard. This unit price was based on the fact that the soil borings contained in the plans on sheet 364 indicated that the A-3 material on the project met the topsoil specifications in regards to pH limits and the organic content (See plan Sheet 364 ...). The Topsoil Specification indicates that this information is in the plans On page 82, Section 162 – Topsoil, the last paragraph states:

“The plans may contain data concerning texture, pH and organic content...”

D.A.B. relied on this information as an accurate representation of the A-3 material found on the project. That the material could, in fact, be placed, compacted, fine dressed and would be ready for sod or seed & mulch as required without any additional work. D.A.B. did not intend to strip the overlaying 6” to 1’ top layer of original surface, stockpile the material, and then spread the material on the slopes of the project. D.A.B.'s low contract unit price for this item reflected this. The Statewide Average for topsoil is \$0.41 per Square Yard. D.A.B.'s contract unit price is 74% below the Statewide Average.

D.A.B. received a Notice to Proceed on August 10th, 1998 and began construction of the project. In February of 1999, D.A.B. began to fine dress slopes and lay sod on the project. D.A.B. followed its original planned method of construction of the slopes.

In all but one of the first seventeen topsoil samples the organic content fell below 1% The Department notified D.A.B. that the samples had failed; and that corrective measures were required. In addition, the Department withheld payment for topsoil and threatened to withhold payment for sod (See Swart Landscaping letter dated March 12, 1999). Topsoil Sample A0017 was taken on March 4, 1999. On March 9, 1999 the Department sent notification of failing test results for samples A0011 through A0017. D.A.B. stopped work on fine dressing and filed a notice of claim on March 31st, 1999 that the actual field conditions differed from the soil borings contained in the plans D.A.B. followed Standard Specification Section 4-3.4 Differing Site Conditions that states

“During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract ... the party discovering the such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.”

On May 6th, 1999 the Department denied D.A.B.'s claim in letter number B/D-118 D.A.B. was forced to begin to generate topsoil in order to meet the Department's directions and mitigate the delay. The next topsoil sample, A0018, was taken on May 18th, 1999 only after the Department denied the request of “Differing Site Conditions” and directed the Contractor that corrective measures were required.

*In denying D.A.B.'s assertion of Differing Site Conditions the Department quoted the wrong specification. They used Section 120, Excavation and Embankment, Subsection 120-3 to say that the Contractor should have examined the soils to determine if the material could be used as topsoil. **This is not part of the topsoil specification.** The Department is trying to absolve themselves of responsibility. The Department has already paid the D.A.B. for additional cost due to longer piles because the borings at the bridges were inaccurate. The Department provided the soil borings so that the Contractor could use the information to bid the project. If a Contractor could use the on-site material for embankment they would not have to import more expensive borrow material. The Department wants to obtain the benefits of supplying information without taking responsibility for the accuracy of the information.*

The Department has not only provided inaccurate information in the plans but they have failed to follow the specifications in determining specification compliance and this was a contributing factor in forcing D.A.B. to alter its planned means and methods of construction. In several letters the Department states “Please notify this office of D.A.B.'s plan to bring this material into compliance with Specification Section 162.” Each of the failing results is from an individual sample. As per the specifications:

“The samples shall be taken at a minimum of four random samples per mile ... Test results shall be averaged for each shoulder mile or increment thereof to determine specification compliance.”

each shoulder mile or increment thereof to determine specification compliance.”

DISPUTE REVIEW BOARD RECOMMENDATION

The Department did not average the samples to determine if the material actually "failed" as per the contract specifications. The Department notified the Contractor that the topsoil was failing and required additional work to bring it into compliance. The Contractor was directed to perform work that may not have been required to meet the specifications.

D.A.B. was forced alter its original planned means and methods of construction of the project due to the inaccurate information contained in the plans regarding the organic content of the material on the project and by the direction of the Department without determination of the material actually being "failing". D.A.B. had to abandoned over 377,000 Square Yards of area that was ready for sod. D.A.B. had to begin to generate enough topsoil to cover the slopes of the project after over 30% of the contract time had passed. D.A.B. was forced to spend additional cost, time and resources in order to attempt to meet the topsoil specifications and maintain satisfactory progress on the project due to the delay. D.A.B. had to mobilize additional crews and equipment. All of these cost and impacts were not anticipated at the time of bidding of this project.

The answer to the questions above is "yes". The Contractor should be able to rely on the information contained in the plans and specifications as accurately reflecting the actual field conditions and should be able to base his contract unit prices on this information. The Department by providing inaccurate information in the soil borings is responsible for the additional cost, time and related impacts due to the inaccurate information provided in the plan. The Department did direct the Contractor to bring the material into compliance without first determining if, in fact, the material was out of specification tolerances.

D.A.B. is due an increase in the contract time and the contract price. (Emphasis Added)

DEPARTMENT'S POSITION:

The dispute at hand is one of Contractual merit and/or entitlement. ... it is not clear to the Department as to whether the Contractor is claiming pursuant to the "Differing Site Condition" article of the Contract or pursuant to the "Errors or Omissions in Plans or Specifications" article. In either case, the Department has determined that NO MERIT exists. The Department's position is outlined in detail in the following pages of this document.

The Department's position is best outlined in the three (3) following parts:

- *Proper Use and Interpretation of the Contract Documents, as set forth in both the specifications and plans.*
- *Pre-Existing Field Conditions/Site Investigations, as observed prior to the letting of the Section 4 Contract.*
- *Contractor's Actions in the field, as they relate to his implementation of means and methods associated with stripping, stockpiling and reuse of the pre-existing onsite topsoil materials.*

...

The dispute at hand is centrally focused on the information provided on Plan Sheet No. 364 of the Section-4 Contract Plan Set, as produced by and for the Department. The Contractor has asserted that his bid assumption for the prosecution of the topsoil work was primarily based on the notion that the information provided on Plan Sheet No. 364 had accurately reflected the actual field conditions throughout the project site and that he should have been able to reasonably rely on such information.

Upon closer review the Department has determined that the Contractor's apparent assumptions were NOT reasonably formulated and that his interpretation of the Contract Document (specifically Plan Sheet No. 364) was not consistent with the Contract.

It is the Department's position that the Contractor has formulated an interpretation of the Contract that is inconsistent with the information provided for in the Contract Documents. Further, it is apparent that from this interpretation the Contractor developed an aggressive Bid assumption that was unreasonable. The Contractor's apparent Bid assumption, appears to be just that, an assumption subject to his own risk and not the Department's. Especially, absent any evidence that the Contractor had expended any reasonable effort to validate his assumption, prior to bid. A rather simple and readily available method would be to conduct a cursory site investigation. Equally simple would be a brief review of the geotechnical soil survey documentation, which was available to all bidders as part of the Final Roadway Soils Survey Report for the Section 4 Contract of the Suncoast Parkway Project.

DISPUTE REVIEW BOARD RECOMMENDATION

In the following sections, we will show that the contractor's topsoil claim is contradicted by:

- A. The Contract Documents
- B. The Pre-Bid Site Condition
- C. The Contractor's Actions Before and After His Notice of Claim on March 29, 1999

A. CONTRACT DOCUMENTS

Plan Sheet No. 364, entitled "Roadway Soil Survey" ...:

"The Department has stated that 'Sole reliance on five (5) plan test is not reasonable.' However, the Department failed to note in its response that there were also 67 pH tests that met the Topsoil Specifications."

The soil borings did not represent that ALL in-situ A-3 material met the Topsoil specification requirements. What the plans DID INDICATE was that at five (5) discrete locations within the entire Project alignment there was some in-situ material that met the Topsoil requirements. Furthermore, the pH levels indicated on Plan Sh. 364 did not entirely fall within the Topsoil requirements (4.30 – 7.50 pH as indicated on Sheet No. 364 vs. the 5.00 to 8.00 pH on average as required by Section 162).

Plan Sheet No. 364 has a heading entitled "Cross Section Soil Survey for the Design of Roads". The plan includes six (6) soil stratus that have been identified specifically for the Section-4 Contract. **For Soil Stratum No. 1, which is identified as A-3 material, the plan sheet indicates that a total of five (5) tests were conducted for "organic content". The results of these five (5) specific tests were found to be within the range of 1% to 4% in organic content. Further, the plan sheet indicates that a total of sixty-seven (67) tests were conducted for "corrosiveness" on the Soil Stratum No. 1 material. The results of these sixty-seven (67) "Corrosion" tests were found to be within the range of 4.30 and 7.50 in pH levels.**

Elsewhere on Plan Sheet No. 364, there is a plan note section that contains information that is pertinent to this dispute. **The plan note section has a separate expressed limitation to the use of or the interpretation of the information contained on the plan. It states that,**

"Strata boundaries are approximate and represent soil strata at each test hole location only."

Lastly, Plan Note No. 1 further stipulates the proper use or interpretation of the information provided by stating,

"The material from Stratum Number 1 (A-3) appears satisfactory for use in the embankment when utilized in accordance with Index 505."

The Soil Stratum No. 1 information contained in Plan Sheet No. 364 was provided for the sole purpose of addressing the suitability of the in-situ material for re-use as roadway embankment. The specific reference to Standard Index 505 ... is a clear in emphasizing that the Soil Stratum No. 1 (A-3) material appears satisfactory for re-use in the embankment. Only in the instance of the Soil Stratum No. 6 (Muck A-8) is there any specific reference to the potential re-use of material (Muck) as topsoil.

...

Plan Sheet Nos. 374 thru 538, entitled "Mainline Roadway – Cross Sections":

These plans depict the roadway cross-sections required throughout the entire Mainline roadway alignment of the Section-4 Contract. These plans also depict the locations of ALL soil borings performed along the Mainline roadway. Each of the borings are then coordinated with the stratus identified on Plan Sheet No. 364. There are approximately 1,110 soil borings located throughout the entire 8.3-mile Mainline roadway alignment.

Comparing the information on the cross-section drawings to Plan Sheet No. 364, the following information is confirmed:

- 1) **Only five (5) borings, out of approximately 1,170 total, were tested for organic content in the A-3 material. This represents only a 0.4% sampling conducted within the Contract site. As to the low frequency of organic testing in the A-3 material, it was confirmed, by interview of the Geotechnical Engineering Consultant responsible for the soil survey, that A-3 materials are ONLY tested for organics when there is reason to believe that organics exist at any particular boring location. (ie. close proximity of a boring to an identified wetland (muck) area with traces of**

location. (ie. close proximity of a boring to an identified wetland (muck) area with traces of

DISPUTE REVIEW BOARD RECOMMENDATION

- brownish coloring exist in boring samples). It was also confirmed that the A-3 materials ARE NOT TYPICALLY tested for organics.
- 2) Only sixty-seven (67) borings, out of approximately 1,170 total, were tested for corrosiveness (pH levels) in the A-3 material. This represents only a 5.7% sampling conducted within the Contract site.
 - 3) In neither case was there any conclusive indication establishing that ALL of the in-situ A-3 material had an organic content or pH levels satisfactory for topsoil re-use.
 - 4) Regardless of the disclaimers found on either Plan Sheet No. 364, Section 120 of the Division II, or Article 2-4 of the Division I, the minimal amount of tests taken on A-3 material, alone, limits the extent one may reasonably expect to use the A-3 as topsoil elsewhere within the Project.

The Geotechnical Report, entitled "Final Roadway Soils Survey Report" ...:

While this Report was not made part of the Contract Documents, it was readily available to ALL bidders prior to the Bid of the Section 4 Contract. A brief review of the Report would have been a minimal effort on the Contractor's part, absent any site investigation. The Report confirms that the primary purpose of the soil survey was to verify the suitability of the in-situ materials as structurally competent for re-use as roadway embankment.

Section 120, entitled "Excavation and Embankment" ... states, in relevant part, that:

"When the plans contain the results of a soil survey, such data is not to be construed as a guarantee of the depth, extent or character of material present. It is the responsibility of the Contractor to make such an examination of the site of the work, and of any material sources indicated in the plans, as may be necessary to inform himself of the conditions under which the work is to be performed."

...

The Contractor could not have examined the boring data closely or conducted any type of cursory site investigation prior to bid as is stipulated by Article 2-4, and still supported his bid assumption. It appears that the Contractor in this case had created a significant risk, that was inconsistent with both the specifications and the plans, without expending any reasonable effort to minimize those risks.

Sub-Article 4-3.4, entitled "Differing Site Condition" (See exhibit-10A) states, in relevant part, that:

"if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, ... and the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work ... an adjustment ... will be made and the contract modified in writing accordingly."

Based on the Contractor's actual experience, he has encountered some in-situ A-3 material that was found to contain adequate organic content and pH levels for re-use as topsoil. This is exactly what is shown in the Contract Documents. However, the Contract Documents DO NOT stipulate that ALL in-situ A-3 material contains an adequate organic content and pH level for re-use as topsoil, as the Contractor contends. Although the Contractor has not been able to use ALL in-situ A-3 material for re-use as Topsoil, this does not constitute a Differing Site Condition. There is NO indication that the actual site conditions have differed materially from those indicated in the Contract. Furthermore, these actual conditions, IN NO WAY appear to be unusual in nature or differ materially from those conditions ordinarily encountered. On the other hand, the Contractor's apparent bid assumption does appear to be somewhat unusual and risky in nature, as well as being inconsistent with the Contract Documents.

...

Article 5-4, entitled "Errors and Omissions in Plans of Specifications" (See exhibit-12A) states that:

"The Contractor shall take no advantage of any apparent error or omission which he might discover in the plans or specifications but shall forthwith notify the Engineer of such discovery, who will then make such corrections and interpretations as he deems necessary for reflecting the actual spirit and intent of the plans and specifications."

DISPUTE REVIEW BOARD RECOMMENDATION

There were NO apparent errors OR omissions on the Plans or the Specifications relative to this dispute. The information shown on Plan Sheet No. 364 is consistent with all related source documentation associated with the soil survey. Therefore, this Article is NOT be applicable to the dispute.

B. PRE-BID SITE CONDITIONS

D.A.B. letter No. 221-187, dated January 5, 2000 (See exhibit-2A) states:

"The Contractor should reasonably be able to rely on the information contained in the plans and specifications as accurately reflecting the actual field conditions and should be able to base his contract unit prices on this information."

Article 2-4 of the FDOT Standard Specifications for Road and Bridge Construction (1991) clearly states that the contractor is required to examine carefully "the site of the proposed work" before submitting his proposal. Article 2-4 further states that the borings "...are not guaranteed to be more than a general indication of the Materials likely at the site of work, approximately at the locations indicated."

...

The second statement from Article 2-4 mentioned above is pertinent in that only five (5) borings were tested for organic content. It is clearly not reasonable for a Contractor to determine that these five (5) test results are representative of approximately 5 Million plus cubic yards of Stratum No. 1 (A-3) Material within the Right Of Way as indicated by the cross sections, nor was it representative of the 1,100 borings (approx.) shown on the cross sections.

...

Based on the fact that there is approximately 8 miles of Roadway Right of Way, with an overall project length of 43,000 linear feet and a Right of Way width of approximately 400 feet and an average depth of Stratum 1 of 9 feet, it is clear that the Contractor's projection of these five (5) test results across the entire Project was NOT REASONABLE.

...

Department's Conclusion

*The Department requests that the Board carefully review and consider the: a) expressed indications in the Contract Documents, b) factual events that have occurred relative to the Contractor's actions, c) Terms and Conditions specified in the Contract that relate to either a "Differing Site Condition" or an "Errors and/or Omissions" type claim. The Department trusts that the Board will find in favor of the Department's position, that **there is NO contractually valid basis for merit for the "Topsoil/Delay Claim"**.*

DRB FINDINGS:

Webster's Ninth New Collegiate Dictionary defines top soil as:

"surface soil usu. including the organic layer in which plants have most of their roots and which the farmer turns over in plowing."

The Project Special Provisions Section 162 – Topsoil page 82 states in part:

162-1 Description.

The work specified in this Section consists of preparation of a layer of mixed material favorable to plant growth, over areas of the project which are to be grassed, grassed and mulched or sodded. This shall be accomplished by use of a six-inch muck blanket, commercially available supplements, topsoil, or yard waste compost.

162-2 Materials.

Material in the specified layer shall be suitable for plant growth and free from appreciable quantities of hard clods, stiff clay, hardpan, gravel, brush, large roots, refuse, or other deleterious materials, and shall be of reasonably uniform quality.

materials, and shall be of reasonably uniform quality.

DISPUTE REVIEW BOARD RECOMMENDATION

The organic content of the specified layer after mixing (as determined in accordance with AASHTO T 267) shall be at least 1.0% and have a pH value (as determined in accordance with ASTM E 70) between 5.0 and 8.0.

If there is evidence of the specified layer being contaminated by other construction operations, the in-place topsoil will be sampled and tested for pH value and organic content.

Immediately after completion of the **spreading and mixing** as specified in 162-4.2, the top 6 inches of the mixed material shall be sampled and tested. The samples shall be taken at a minimum of four random samples per mile. On projects or areas less than ¼ mile in length, 1 sample per ¼ mile will be sufficient. When the source of topsoil changes, an additional sample will be required at the point of change.

Test results shall be averaged for each shoulder mile or increment thereof to determine specification compliance. Out of tolerance individual tests to a minimum of 0.5% organic content and minimum of 4.5 and maximum 8.5 pH values will be allowed.

Topsoil material may be obtained from either, or a combination, of the following sources:

- (a) Excavation within the limits of construction on the project. Such material may be stockpiled or windrowed on the project in areas approved by the Engineer.
- (b) Designated borrow pits for the project.
- (c) **From other sources of topsoil provided by the Contractor.**
- (d) Yard waste compost prepared in accordance with 17-709.515, Florida Administrative Code.
- (e) By the addition of other appropriate supplements mixed with the existing material in quantities sufficient to achieve the minimum organic levels and pH range as provided for in 162-2.

Supplements may be materials such as muck, commercial peat, dolomitic limestone, commercial sulfur, or any other material commonly accepted in the agricultural industry. Commercial fertilizer is not to be used for these adjustments.

The plans may contain data concerning texture, pH and organic content of the existing topsoil within the project limits. All muck excavated on the project may not be suitable for use in topsoil construction. The Contractor shall make his own determination as to the quantity and suitability of existing muck.

162-3 Disposition of Excess Topsoil.

Ownership of any stockpiled topsoil material excavated from within the limits of construction, which is not used in topsoil construction and which is suitable for use in topsoil construction, shall remain with the Department. This material shall be stockpiled in areas within the project right of way as designated by the Engineer or in Department owned sites as shown in the plans.

162-4 Construction Methods.

162-4.1 Preparation of Areas: Prior to beginning of the work, the surface of the earthwork shall have been constructed to such lines and elevations as will provide a surface conforming to the plan lines and elevations upon completion of the topsoil operations. The surface of the earthwork shall be left in a roughened and loose condition.

The Contractor shall exercise care to prevent contamination of the mixed material by other construction operations. The Contractor shall correct the pH value of topsoil contaminated by his operation by application of appropriate supplements. The cost of any corrective work shall be at the Contractor's expense.

162-4.2 Spreading and Mixing: **The necessary material shall be uniformly spread over areas to receive treatment. When supplements are furnished, sufficient quantities to meet the above stated specifications shall be applied.**

After spreading, the material shall be mixed with the underlying soil to a combined depth of six inches. Mixing shall be done so as to provide a uniform blanket true to line and grade. Mixing

Page 7 of 9
After spreading, the material shall be mixed with the underlying soil to a combined depth of six inches. Mixing shall be done so as to provide a uniform blanket true to line and grade. Mixing

DISPUTE REVIEW BOARD RECOMMENDATION

will not be required if a 6 inch layer of specified material is placed. Any slippage of this material shall be corrected by the Contractor at his expense.

162-5 Method of Measurement.

The quantity to be paid for under this Section shall be the area in square yards for the topsoil layer meeting the requirements of 162-2, completed and accepted, determined as specified in 9-1.3.

162-6 Basis of Payment.

The quantity determined as provided in 162-5 shall be paid for at the contract unit price per square yard for the topsoil layer 6 inches thick.

The above price and payment shall constitute full compensation for completing all work specified in this Section.

It includes the hauling of any material from the project right of way, designated borrow areas, other sources as may be provided by the Contractor, any combination of the above or the furnishing of any supplemental materials that may be required to meet the required organic content levels and pH range. It also includes the mixing, grading, and/or leveling as required to provide a relatively uniform homogeneous topsoil mix throughout the six inches within the prescribed lines and grades.

Payment shall be made under:

Item No. 162-2- Topsoil – per square yard.

This clearly contemplates that should the Contractor obtain suitable material from within the project, the Contractor would manipulate, stockpile or windrow said available usable material.

It is **not reasonable** for the Contractor **to not intend to strip** the available overlaying 6” to 1’ top layer of original surface, stockpile the material, and then spread the material on the slopes of the project.

Information contained in the plans can be relied upon by the Contractor to formulate his bid subject to reasonable interpretation and conditions spelled out in the Contract.

However Standard Specifications for Road and Bridge Construction, Section 2-4 Examination of Plans, Specifications, Special Provisions and Site of Work clearly states that:

The bidder is expected to examine carefully the site of the proposed work, and the proposal, plans, specifications and contract forms for the work contemplated, before submitting a proposal. Such shall also include investigation as to the condition 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.

*Details pertaining to boring, as shown on the plans, are not guaranteed to be more than a general indication of the materials likely to be found adjacent to holes bored at the site of the work, approximately at the locations indicated. The Contractor shall examine boring data, where available, and make **his own interpretation of the subsoil investigations** and other preliminary data, and shall base his bid on his own opinion of the conditions likely to be encountered.*

The bidder's submission of a proposal shall be considered prima facie evidence that he has made examination as described in this Article.

Further Section 5-4 Errors or Omissions in Plans or Specifications states:

The Contractor shall take no advantage of any apparent error or omission which he might discover in the plans or specifications but shall forthwith notify the Engineer of such discovery, who will then make such corrections and interpretations as he deems necessary for reflecting the actual spirit and intent of the plans and specifications.

DISPUTE REVIEW BOARD RECOMMENDATION

The Board finds that there is **no evidence that the Department supplied incorrect information in the plans and more specifically plan sheet 364 –Soil Survey that would mislead a contractor to believe that all Stratum No. 1 would meet topsoil requirements.**

The plans do not quantify the volume of material that was within the parameters meeting topsoil specifications. It is **not reasonable for any contractor to interpret that all of the Stratum No. 1 met topsoil requirements based on the information contained on sheet 364.** Further, there is insufficient information in the plans for the bidding contractor to quantify the amount of topsoil likely to be encountered.

The Department did not direct the Contractor to alter his planned means and methods.

DRB RECOMMENDATION:

Based on the materials supplied to the Board and presentations to the Board at the DRB hearing the Board finds no entitlement to the Contractor's position.

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 both parties.

I certify that I have participated in all of the meetings of this DRB regarding Issue No. 1 and concur with the findings and recommendations.

Respectfully Submitted

Disputes Review Board

E. K. Richardson, P.E.; DRB Chairman

Ashley R. Cone; DRB Member

John H. Duke, Sr.; DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



E. K. Richardson, P.E.; DRB Chairman

D.A.B.
Constructors, Inc

P.O. Box 1589, Inglis, Florida 34449
(352) 447-5488, Fax (352) 447-4133

June 26, 2000

Letter No. 221-345

SENT VIA FAX AND US MAIL

Paul Krichman, Project Resident Engineer
Beiswenger Hoch and Associates, Inc.
261 Anderson Snow Road
Brooksville, Florida 34609

Mr. Keith Richardaon, Chairman-DRB
1430 Cherry Lane
Lakeland, Florida 33811

Mr. John W. Dukes, Member- DRB
2932 Sunbittern Court
Windermere, Florida 34786

Mr. Rammy Cone, Member- DRB
ARC Construction Services
3409 McKay Avenue
Tampa, Florida 33609

Reference: **Project** **Suncoast Parkway Section 4A & 4B**
 FDOT Project No. **97140-3303 & 97080-3300**
 F.I.N.: **258957 1 52 01 and 258904 1 52 01**
 W.P.I. No. **7155805 and 71552002**
 County **Pasco and Hernando**

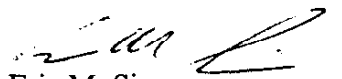
Subject: **DISPUTES REVIEW BOARD RECOMMENDATION-TOPSOIL:**

Gentlemen:

We are in receipt of the Dispute Review Board Recommendation and reject the recommendation. We appreciate the Board's time in this matter.

Call me at (352) 796-7455 if there are any questions.

Very Truly yours;
D.A.B. Constructors, Inc.


Eric M. Sims
Brooksville Area Manager

Cc: B. Bachschmidt, G. D'Amico, C. Campbell, File