

# DISPUTE REVIEW BOARD DECISION

March 2, 2000

Mr. Dan Garner, P.E.  
CEI Resident Engineer  
Greenhorn & O'Mara, Inc.  
2820 Winter Lake Road  
Lakeland, Florida 33803

Mr. Daniel C. Vogel  
Vogel Bros. Building Co.  
P.O. Box 5200  
Lakeland, Florida 33807-5200

State Project No. 97160-3305  
F.P. ID 201312-1-52-01  
Polk Parkway Toll Plazas  
Dispute Review Board

## ISSUE No.1: COP 123 – Concrete Finishing Claim

Dear Sirs:

On January 28, 2000 at the request of the contractor, Vogel Bros. Building Co. (Vogel) and the Florida Department of Transportation (FDOT), the Disputes Review Board (DRB) held a hearing to consider the subject claim. Vogel and FDOT submitted written position papers prior to the hearing and offered verbal testimony during the hearing. Following the hearing the DRB requested additional information from Vogel.

For the record it should be noted Vogel and FDOT decided, following the August 4, 1998 DRB meeting, the DRB would convene only when requested rather than on a regularly scheduled basis. The next meeting was held 15 months later on November 16, 1999 for the purpose of updating the DRB on the disputed issues after the construction was completed.

The Board was requested to determine "Entitlement" for the disputed issues. Should Entitlement be found in favor of the contractor, the parties would negotiate the value of the claim since time is not an issue.

## ISSUE:

Vogel:

*"Since we are being held to a standard above both the original and final specification we felt the only just solution was to request compensation for the difference between our actual and bid cost."*

FDOT:

In its letter identified as GOV 169 the FDOT states: *"The standard of quality for concrete finishing on the project is accurately described in the specifications articles copied and attached with your letter. Standard Specifications Article 400-15.2.6.3 allows air pockets of up to ¼ inch in the finished surface prior to application of the Class V coating. We have not required depressions smaller than ¼ inch to be filled on surfaces receiving a Class V coating. Concrete surfaces not receiving a Class V coating have been finished in accordance with TSP 03310-3.07B. This specification requires a smooth finish with defective areas and fins removed"*.

## HISTORY:

During the bidding process a non-mandatory visit to Three Lakes Toll Plaza was arranged by FDOT to identify the work and workmanship to potential bidders. Vogel was one of the contractors making the tour. Vogel

submitted a proposal and subsequently awarded the contract to construct the toll plazas and requested a return visit to Three Lakes to establish the quality for finishing concrete surfaces. The FDOT suggested a visit to the Southern Connector (Celebration) in Orlando rather than returning to Three Lakes. Vogel has continually referred to these facilities as Base Line for quality of finishing concrete surfaces on the Polk Parkway structures. The FDOT maintains the Specifications and Plans clearly identify the expected quality of concrete surface finish for this project.

On December 22, 1999, a field review of Three Lakes Plaza, Celebration Plaza, and Polk Parkway Plazas and a hearing to follow the tour was scheduled by and for the Disputes Review Board. The tour was conducted jointly by FDOT and Vogel representatives, each describing their understanding of the pre and post bidding visits to existing Turnpike facilities, also allowing the Board to view workmanship and attempt to establish a Baseline for comparison with work on the Polk Parkway. The hearing was cancelled due to Mr. Vogel's illness and re-scheduled for January 28, 2000.

A hearing was held in the Turnpike's office at 3520A US Hwy.98 South, Lakeland, FL. at 1:30 PM January 28 2000 for the purpose of the parties presenting their position on the disputed issue. Following the hearing the Board requested by letter dated January 30, 2000 to Vogel any additional photos or diary entries in his possession to assist the Board. The information from Vogel was received February 14,2000. After receiving additional information from Vogel the chairman ask FDOT if they desired to rebut or comment on the additional report submitted by Vogel. A letter was received from FDOT (Greenhorn & O'Mara , Inc.) dated February 23,2000 in the form of a rebuttal to the most recent Vogel data.

#### **POSITIONS:**

**Vogel** maintains they were held to a standard above both the original and final specification and the Engineer (FDOT) required additional rubbing of the concrete surfaces beyond the requirements of the specifications.

**FDOT** maintains the specifications were clear concerning finishing concrete surfaces and during construction the inspectors made every effort to work with the contractor to obtain an acceptable finish. In a partnering effort did approve changing to a Class V finish due to the contractor using a higher than specified strength concrete to allow faster stripping of forms. Every effort was made within the specifications to work with the contractor to accomplish the work.

#### **FINDINGS:**

The FDOT Standard Specifications for Road and Bridge Construction 1991 states (In part):

##### ***Section 400-15 Finishing Concrete.***

***400-15.1 General Surface Finish (Required for All Surfaces): 2<sup>nd</sup> Para. Immediately after removal of forms from any exposed concrete surface, all fins and irregular projections shall be removed flush with the surface. All holes, material tie cavities, honeycomb, chips, and spalls shall be cleaned, saturated with water, and carefully pointed with mortar.***

***In the event unsatisfactory surfaces are obtained, they shall be repaired by methods approved by the Department, or the affected concrete shall be rejected. Any surface repair or removal of rejected concrete shall be at the expense of the contractor.***

The Technical Special Provisions for this project state in part:

##### ***Section 3.07 Finish of Formed Surfaces:***

***B. Smooth Formed Finish: Provide a smooth-formed finish on formed concrete surfaces exposed to view or to be covered with a coating material applied directly to concrete, such as waterproofing, dampproofing, painting, or another similar system. This is an as-cast concrete surface obtained with selected form-facing material, arranged in an orderly and symmetrical manner with a***

***view or to be covered with a coating material applied directly to concrete, such as waterproofing, dampproofing, painting, or another similar system. This is an as-cast concrete surface obtained***

*minimum of seams, and using as large pieces as possible. Repair and patch defective areas with fins and other projections completely removed and smoothed.*

*C. Smoothed Rubbed Finished: Provide smooth-rubbed finish on all exposed-to-view concrete surfaces that have received smooth-formed finish treatment, and not later than 1 day after form removal.*

*3. Appearance of all concrete surfaces is subject to the approval of the Engineer and the Department.*

**The Board Finds:**

- Regardless of the finishes at Three Lakes and Celebration facilities, Vogel has not produced evidence the level of concrete finishes at these sites were a part of this contract.
- After hearing testimony from all parties and visiting sites to compare workmanship the Board has reviewed applicable specifications and finds no appreciable difference in concrete surface finishes observed at Three Lakes, Celebration, and Polk Parkway tunnels. However the Board cannot determine from information provided in the hearing and subsequent photographs the true extent of work required to prep the concrete surfaces for application of the final finishes to the concrete surfaces on the toll booths and plazas.
- As a result of not being afforded the opportunity to observe construction in progress through the critical stages of the project and most importantly much of the concrete finishing, the Board cannot reasonably determine undue enforcement of the specification since the dispute is very subjective and contains limited factual information. This issue is one of the classic, "WE SAID-THEY SAID", lacking undisputed documentation.

- ***Therefore the Board Recommends:***

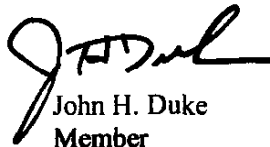
*Based upon information presented at the hearing, observations made during site visits on December 22, 1999 and subsequent data submitted the Board finds the specifications for this project were written in such a manner to insure the FDOT would receive a quality product. The interpretation and compliance with the specifications is at best subjective requiring day to day knowledge, which the Board was not afforded. The Board suggest both parties attempt to resolve this issue through the Partnering process due to the absence of undisputed facts. Any evidence relating to overzealous or overly enforced specifications has been obliterated with the class V coating.*

Respectfully Submitted

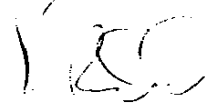
Dispute Review Board-Polk Parkway Toll Plazas  
State Project No.97160-3305



E. K. Richardson  
Chairman



John H. Duke  
Member



John Rodda  
Member