

STATE ARBITRATION BOARD

1022 LOTHIAN DRIVE
TALLAHASSEE, FLORIDA 32312
PHONE: (904) 385-2852

04 February 1991

+ + + NOTICE + + +

In the case of Potashnick Construction, Inc. versus the Florida Department of Transportation on Project No. 03175-3406 in Collier County, Florida, both parties are advised that State Arbitration Board Order No. 01-91 has been properly filed on February 4, 1991.



H. Eugene Cowger, P.E.
Chairman & Clerk, S.A.B.

HEC/sfc

S.A.B. CLERK
FEB 4 1991
FILED

Copies of Order to:

R.D. Buser, P.E., Director of Construction/FDOT
Potashnick Construction, Inc.

STATE ARBITRATION BOARD

ORDER NO. 01-91

RE:

Request for Arbitration by
Potashnick Construction, Inc. on
Job No. 03175-3406 in
Collier County

The following members of the State Arbitration Board
participated in the disposition of this matter:

H. Eugene Cowger, P. E. Chairman
Frank Carlile, P. E. Member
Sam Turnbull, P. E. Member

Pursuant to agreement of both parties to the contract to
waive oral presentations, the State Arbitration, at its
meeting on January 29, 1991, considered only written
information submitted by each party and the contract between
the parties. The information submitted by the parties
consisted of the Request for Arbitration of A Claim,
including attachments thereto, and a letter to the State
Arbitration Board from R. D Buser, P. E., Director,
Department of Transportation Office of Construction, dated
January 21, 1991, including attachments thereto.

The Board Members, having fully considered the evidence
presented, now enter their order No. 01-91 in this cause.

ORDER

The Contractor presented a request for arbitration of a
claim for additional compensation in the amount of \$12,503.20
for unrecovered costs caused by the quantities of concrete
shown in the plans for construction of approach slabs being
in error. He presented the following information to support
his claim:

1. The quantities of concrete indicated on the plans for
construction of approach slabs were, in every case, less than
the quantities calculated based on the dimensions to which
approach slabs were required to be constructed.
2. In arriving at the per each price bid for the item
Approach Slabs, we applied the quantities shown in the plans
for concrete and reinforcing steel to unit costs for these

items of work.

3. If the correct quantities for concrete had been shown on the plans our per each price for Approach Slabs would have been proportionately higher.

4. Compensation for the item Approach Slabs should be adjusted in accordance with the provisions of Articles 9-3.3.1 and 9-3.3.2 of the Standard Specifications which provide for proportional adjustment when the quantity for a lump sum item changes.

The Department of Transportation rebutted as follows:

1. Articles 9-3.3.1 and 9-3.3.2 of the Standard Specifications are not applicable here because they are intended for use when the pay quantity is designated to be a lump sum and Approach Slabs are paid for on a per each basis.

2. Not all of the factors applied in arriving at the bid unit price for Approach Slabs, such as labor, equipment, materials, forming, steel placing, finishing, curing, taxes, insurance, overhead and profit were effected by the increase in the quantity of concrete.

3. The proportionate calculation used by the contractor in determining the amount claimed as additional compensation did not take into consideration that there were quantities shown in the plans for both concrete and reinforcing steel. The plan quantity for reinforcing steel was correct.

4. We agree that additional compensation is due the Contractor, but only in the amount of additional costs he actually incurred due to the increased quantity of concrete.

The Board, in considering the testimony and exhibits, found the following points to be of particular interest.

1. The increase in quantity of concrete was caused by a variation in the as-constructed dimensions of the approach slabs from the plan dimensions. In order to match the bridge slab and the top of the backwall of the end bent the portion of an approach slab adjacent to the bridge had to be

constructed thicker.

2. Article 9-3.2.2 provides that, when there is a plan change, payment under a lump sum item will be adjusted proportionately.

3. The specifications are silent on how to adjust payment when there is a plan change for an item paid for on a per each basis. However, when viewed in light of the circumstances existing here, payment under the per each concept is essentially the same as under the lump sum concept.

4. A direct application of proportionate adjustment is not possible in this instance because the plans show an estimated quantity for two items, only one of which changed.

5. Approximately six months elapsed between the date on which the Contractor initially filed his claim and the date of the arbitration hearing on this matter.

From the foregoing and in light of the exhibits presented, the State Arbitration Board finds as follows:

The Department of Transportation is order to compensate the Contractor in the amount of \$8,000 for his claim.

Tallahassee, Florida

Dated: 04 February 1991

Certified Copy:

H. Eugene Cowger
H. Eugene Cowger, P. E.
Chairman & Clerk, S.A.B.

04 February 1991
Date

H. Eugene Cowger
H. Eugene Cowger, P. E.
Chairman & Clerk

Frank Carlile
Frank Carlile, P. E.
Member

Sam P. Turnbull
Sam P. Turnbull, P. E.
Member

S.A.B. CLERK
FEB 4 1991
FILED

STATE ARBITRATION BOARD

1022 LOTHIAN DRIVE
TALLAHASSEE, FLORIDA 32312
PHONE: (904) 385-2852

January 14, 1990

Mr. R.D. Buser, P.E.
Director of Construction
Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399-0450

Re: Federal Aid Project No. ACI-75-4(91)80
Job No. 03175-3406
Collier County

Dear Mr. Buser:

Enclosed please find a Request For Arbitration Of A Claim package submitted by Potashnick Construction, Inc., the Contractor for the above referred project, concerning a claim for additional compensation for work done in constructing concrete approach slabs.

The Contractor has elected to submit only written information and has waived his right to make an oral presentation to the State Arbitration Board.

If the Department of Transportation agrees to submit only a written response and, thereby, waive its right to make an oral presentation, the Board will base its decision on this claim on the written presentations.

The Board anticipates taking up this claim at its meeting on Tuesday, January 29, 1991. Therefore, it will be necessary for us to receive the Department's decision as to whether it agrees to submit only a written response and, if appropriate, the Department's written rebuttal to the Contractor's Summary of Claim no later than January 25, 1991.

Sincerely,



H. Eugene Cowger, P.E.
Chairman, S.A.B.

HEC/sfc

FLORIDA

BOB MARTINEZ
GOVERNOR



DEPARTMENT OF TRANSPORTATION

605 Suwannee Street, Tallahassee, Florida 32399-0450

BEN G. WATTS
SECRETARY

January 21, 1991

H. Eugene Cowger, P. E.
Chairman, State Arbitration Board
1022 Lothian Drive
Tallahassee, Florida 32312

Re.: State Project No. 03175-3406
F A P No. ACI-75-4(91)80
Collier County

Dear Mr. Cowger:

We have reviewed the request made by Potashnick Construction, Inc. for arbitration of a claim for extra compensation in regard to construction of concrete approach slabs on the referenced project.

The Department agrees to limit all arguments to written submittals. A rebuttal of the Contractor's claim is enclosed.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. D. Buser".

R. D. Buser, P. E.
Director, Office of Construction

cc: Ken Blanchard

**APPROACH SLAB
CLAIM**

**STATE JOB
03175-3406**

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| | |
|--------------------------------|--|
| JOB DESCRIPTION | From approximately 6 miles West of SR 29 to to approximately 2,000' West of SR 29 East of Naples. |
| ROAD NUMBER | I-75, SR-93 |
| STATE JOB NUMBER | 03175-3406 |
| FEDERAL AID NUMBER | AGI-75-4(91)80 |
| BID DATE | 06/24/87 |
| WORK ORDER ISSUED | 09/30/87 |
| FIRST CHARGEABLE DAY | 10/14/87 |
| WORK BEGAN | 10/14/87 |
| CONDITIONAL ACCEPTED | N/A |
| FINAL ACCEPTED | 04/23/90 |
| FINAL AMOUNT | \$15,447,215.20 |
| CONTRACT TIME | 715 DAYS |
| CONTRACT TIME USED | 780 DAYS |
| SUPPLEMENTAL AGREEMENTS | 17 |
| TIME EXTENSIONS | 70 DAYS |

STATE JOB NO. 03175-3406
CLAIM SUMMARY
(APPROACH SLABS)

The Department does not agree with Potashnick's methodology utilized in preparing the claim for additional quantities used while constructing the approach slabs. The following discussion is provided to convey the Department's analysis.

The quantity for each slab, as established by the plans, was found to be in error. The original quantity shown for each slab was 24.8 cubic yards. The Department determined the appropriate concrete quantity for each approach slab at Wildlife Crossing Nos. 4, 6, 7, 8, 10, and 12 to be 27.22 cubic yards. An increase of 2.42 cubic yards per slab. There were 24 slabs poured while constructing the crossings which generated a collective total of 58.08 cubic yards of increased quantity.

The approach slab quantity for Bridges D, E and F was also found to be in error. Actual quantity per slab was computed to be 26.25, an increase of 1.45 cubic yards. Twelve slabs were poured which required an accumulative total of 17.40 cubic yards. The total increase for all the bridges on the project was 75.48 or an average of 2.10 cubic yards for each of the 36 slabs poured.

Potashnick has asked to be compensated for the additional quantities proportionally as established by the Standard Specifications Section 9-3, Subsections 9-3.3.1 and 9-3.3.2. These sections are intended for utilization with "lump sum" items and are not applicable to items paid as "each". Therefore the Department has sought a reasonable approach to provide fair and just compensation to the contractor.

Potashnick is seeking \$12,503.20 for total reimbursement which is \$2,622.11 more than should have been submitted. The contractor failed to deduct steel costs which were not effected by the change in quantities. The original bid was based on 24.8 yards or \$161.29 per yard. The price of the steel furnished and tied, as stated in Potashnick's letter of October 3, 1990 was .3443 per lb. This equates to a cost of \$30.38 per cubic yard, which would generate a maximum allowable claim of \$9,881.09.

Potashnick's bid of \$4,000.00 per each slab would include, but not limited to, the following: labor, equipment, materials, forming, steel pouring, finishing, curing, taxes, insurance, overhead and profit. A very comprehensive list list of necessities to be taken into consideration when bidding an item. The impression of the Department is that all of the above bidding considerations were not effected by an average increase of 2.10 cubic yards per slab. The basis for this decision is supported by the actual time it should have taken to prepare for and place the additional concrete.

Claim Summary
State Project No. 03175-3406
January 16, 1991
Page Two

Preparing the formwork should have been a simple task. The total amount of additional forming needed to construct all 36 approach slabs was 87.12 square feet. All that was necessary was to increase the height of two boards, which are five feet in length, by approximately four inches. Knowing this in advance would eliminate any time consuming forming efforts. Pouring the additional concrete took only a minimal amount of extra time. A pour of 24.8 yards would require the use of 3 concrete trucks. Three trucks would also be needed if the quantity was increased to 27.22 yards. Pouring time was not increased by transportation needs. The concrete was poured directly into the forms and the trucks were able to empty their load very quickly. Therefore, the additional concrete was placed in the forms in a very short time. The finishing of the revised concrete quantity took no longer than the original quantity designated by the plans. The surface area did not change. The Department does not agree that the effort needed to pour this additional material merits proportional compensation based on the above explanation.

The Department analyzed this claim with the intention of paying the contractor for materials, labor and equipment needed to handle the extra quantity. The attached analysis provides specific cost data for concrete at invoice prices, forming and handling this increase. An allowance of 10% was also added to cover overhead and profit for this work. The amount that the Department was able to validate is \$5,551.34. Reimbursing Potashnick in this amount would cover all expenditures plus provide him with a reasonable profit.

The Department, in an attempt to reach a just settlement, utilized the "Means Heavy Construction Cost Data, 1990 Edition" as a source of documentation. This reference guide, based on national averages, provides reliable information on crew sizes, manhours, equipment cost and material requirements for nearly every aspect of construction work. Utilization of this data base was necessary since Potashnick failed to provide specific information for analysis.

The Department is hopeful that we have shown that an equitable settlement was offered to Potashnick. All aspects were considered and compensation offered for each point.

RER:ljw

03175-3406

ADDITIONAL APPROACH SLAB QUANTITY CLAIM

| LOCATION | PLAN CY | FINAL CY | INCREASE CY |
|----------|------------|-------------|----------------|
|----------|------------|-------------|----------------|

WILDLIFE CROSSINGS
NO.'S 4,6,7,8,10 & 12
(24 SLABS)

| | | |
|------|-------|------|
| 24.8 | 27.22 | 2.42 |
|------|-------|------|

BRIDGES D, E, & F
(12 SLABS)

| | | |
|------|-------|------|
| 24.8 | 26.25 | 1.45 |
|------|-------|------|

24 SLABS @ 2.42 CY = 58.08 CY

12 SLABS @ 1.45 CY = 17.40 CY

ADDITIONAL CONCRETE 75.48 CY

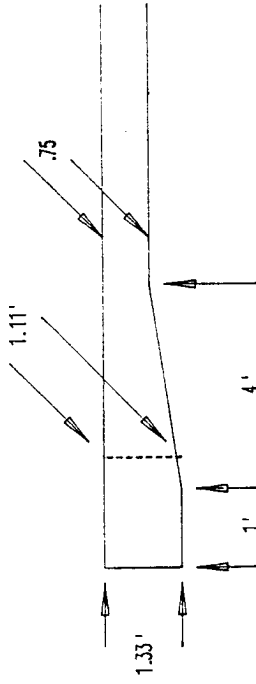
CONTRACTOR'S AVERAGE COST \$56.58
PER CUBIC YARD

ADDITIONAL CONCRETE 75.48

ADDITIONAL EXPENSE \$4,270.66

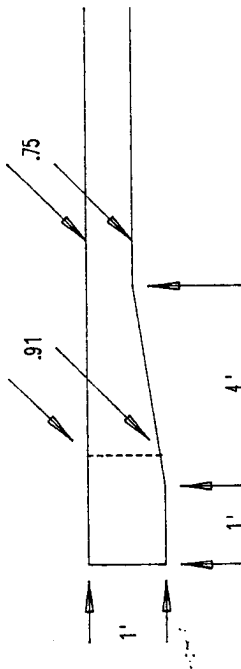
ADDITIONAL FORMING AREA

REVISED



$$\begin{aligned}
 1 \times 1.33 &= 1.33 \\
 1.33 + .75 / 2 \times 4 &= 4.16 \\
 1.10 \times 1.11 &= 1.22 \\
 \text{TOTAL SF} &= 6.71 \\
 \text{BOTH SIDES} &= 13.42 \text{ SF}
 \end{aligned}$$

PLAN



$$\begin{aligned}
 1 \times 1 &= 1.00 \\
 1 + .75 / 2 \times 4 &= 3.50 \\
 1.10 \times .91 &= 1.00 \\
 \text{TOTAL SF} &= 5.50 \\
 \text{BOTH SIDES} &= 11.00 \text{ SF}
 \end{aligned}$$

ADDITIONAL FORMING NEEDED
 13.42 - 11.00 = 2.42 SF
 2.42 SF x 36 SLABS = 87.12 SF

FORMING

| | |
|---------------------------------|----------------------------|
| ADDITIONAL FORMING NEEDED | 87.12 SF |
| | |
| MATERIAL COST (87.12 x .53) | \$46.17 |
| LABOR COST (87.12 x 3.54) | \$308.40 |
| EQUIPMENT COST (87.12 x .13) | \$11.33 |
| | <hr style="width: 100%;"/> |
| TOTAL | \$365.90 |

POURING AND FINISHING

SF EFFECTED ON EACH SLAB = $(41.5 \times 5) = 207.5$ SF

TOTAL SF FOR 36 SLABS = 7470 SF

EACH APPROACH SLAB INCREASED IN VOLUME BY 2.23 CY'S
A 9% INCREASE IN CONCRETE AND REQUIRED HANDLING.

ADDITIONAL COST RELATED TO THE 9% INCREASE

| | |
|--------------------------------------|----------------------------|
| LABOR COST (7470 x .42 x .09) | \$282.37 |
| EQUIPMENT COST (7470 x .19 x .09) | \$127.74 |
| | <hr style="width: 100%;"/> |
| TOTAL | \$410.11 |

NOTE: ALL DATA USED IN THE ANALYSIS OF THE
FORMING AND HANDLING OF THE ADDITIONAL
MATERIAL WAS TAKEN DIRECTLY FROM THE
MEANS HEAVY CONSTRUCTION COST DATA,
1990 EDITION

CLAIM SUMMARY

| | |
|----------------------------|------------------------|
| ADDITIONAL CONCRETE | \$4,270.66 |
| ADDITIONAL FORMING | \$365.90 |
| ADDITIONAL HANDLING | \$410.11 |
| SUBTOTAL | \$5,046.67 |
| 10% | <u>\$504.67</u> |
| TOTAL | \$5,551.34 |

17-Jan-91

PAGE 1

SUMMARY OF CONCRETE INVOICES

| CY'S ON INVOICE | INVOICE AMOUNT |
|-----------------|----------------|
| 33.00 | \$2,046.33 |
| 33.00 | \$2,046.33 |
| 68.00 | \$4,197.00 |
| 33.00 | \$2,078.60 |
| 67.00 | \$4,354.80 |
| 33.00 | \$2,046.33 |
| 33.00 | \$1,741.00 |
| 35.00 | \$2,094.03 |
| 66.00 | \$3,825.20 |
| 72.00 | \$4,044.96 |
| 1.00 | \$49.29 |
| 30.25 | \$1,732.71 |
| 68.50 | \$3,892.96 |
| 9.00 | \$473.82 |
| 9.00 | \$473.82 |
| 9.00 | \$473.82 |
| 3.00 | \$155.82 |
| 7.50 | \$433.27 |
| 7.50 | \$433.27 |
| 7.50 | \$433.27 |
| 8.75 | \$513.96 |
| 7.50 | \$440.43 |
| 7.50 | \$440.43 |
| 7.50 | \$440.43 |
| 8.00 | \$464.28 |
| 1.50 | \$84.27 |
| 9.00 | \$488.13 |
| 9.00 | \$488.13 |
| 9.00 | \$488.13 |
| 5.00 | \$271.89 |
| 9.00 | \$473.82 |
| 9.00 | \$473.82 |
| 9.00 | \$473.82 |
| 3.00 | \$155.82 |
| 9.00 | \$539.01 |
| 9.00 | \$539.01 |
| 5.00 | \$297.33 |
| 9.00 | \$539.01 |
| 2.00 | \$117.66 |
| 9.00 | \$524.70 |

17-Jan-91

PAGE 2

| | |
|-------|------------|
| 9.00 | \$524.70 |
| 9.00 | \$524.70 |
| 4.50 | \$265.53 |
| 9.00 | \$524.70 |
| 9.00 | \$524.70 |
| 9.00 | \$524.70 |
| 4.50 | \$265.53 |
| 9.00 | \$524.70 |
| 9.00 | \$524.70 |
| 9.00 | \$524.70 |
| 5.00 | \$302.10 |
| 32.00 | \$1,526.40 |
| 32.00 | \$1,577.28 |
| 32.00 | \$1,526.40 |
| 0.00 | \$44.52 |
| 33.00 | \$1,663.14 |
| 0.00 | \$120.84 |
| 34.00 | \$1,621.80 |
| 31.00 | \$1,636.11 |
| 32.00 | \$1,634.52 |
| 32.00 | \$1,640.88 |
| 32.00 | \$1,590.00 |

TOTAL CY'S 1147.00

TOTAL COST \$64,893.36

AVERAGE COST PER CUBIC YARD = \$56.58
 (\$64,893.36 / 1147)



Potashnick

R.B. POTASHNICK • POTASHNICK CONSTRUCTION, INC.

GENERAL CONTRACTORS

August 16, 1990

Florida Dept. of Transportation
P. O. Box 789
Fort Myers, FL 33902

ATTN: Mr. C. L. Carner
Resident Engineer

Gentlemen:

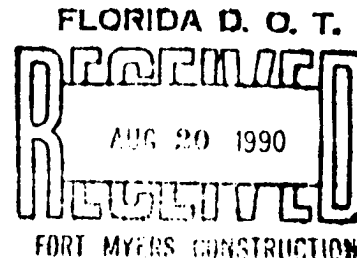
RE: State Project No. 03175-3406, I-75
F.A.P. No. ACI-75-4(91)80, Collier Co.
Contract No. 16694, W.P.I. No. 4141413

R. B. Potashnick, in preparing his bid on the above referenced project, relied upon the quantities set forth on the project plans. Project Plan Sheets Nos. 60 and 61 show the quantity of concrete and reinforcing steel for the approach slabs to be 24.8 cubic yards and 2,188 pounds, respectively. Since the Florida D.O.T. requires that the approach slabs be bid on a "per each" basis, R. B. Potashnick used the quantities set forth in the Project Plans to compute his unit bid price per each approach slab of \$4,000.00

After review of R. B. Potashnick's records on the approach slab construction, Potashnick's engineers determined there was a significant overrun in quantity. R. B. Potashnick then checked the Florida D.O.T.'s quantity stated in the Project Plans and found it to be in error. The actual plan quantity of concrete for wildlife crossings No. 4, 6, 7, 8, 10 and 12 is 27.33 cubic yards per each approach slab and for structures D, E and F it is 26.20 cubic yards per each approach slab. The total quantity difference between the correct quantity of concrete required for the wildlife crossings and structures D, E and F and the quantity represented by the Florida D.O.T. Project Plans is equal to 77.52 cubic yards.

Therefore, due to the misrepresentation on the Florida D.O.T.'s plans as to the quantity contained in each approach slab, R. B. Potashnick does herewith submit his claim for the additional material and labor necessary to construct the approach slabs of \$12,503.20.

The above claimed amount was computed by dividing R. B. Potashnick's unit bid price of \$4,000.00 per each approach slab by the Florida D.O.T.'s quantity of concrete stated on the Project Plans of 24.8 cubic yards, which results in a



| | |
|-------------------------------------|------|
| <input checked="" type="checkbox"/> | CLC |
| <input type="checkbox"/> | SLM |
| <input checked="" type="checkbox"/> | JSG |
| <input type="checkbox"/> | JEM |
| <input checked="" type="checkbox"/> | PE |
| <input type="checkbox"/> | EFO |
| <input type="checkbox"/> | KBC |
| <input type="checkbox"/> | AMP |
| <input type="checkbox"/> | JWD |
| <input type="checkbox"/> | MP |
| <input checked="" type="checkbox"/> | FILE |

P.O. BOX 190

CAPE GIRARDEAU, MO 63702-0190

314-334-3081

FACSIMILE 314-334 4858 AN EQUAL OPPORTUNITY EMPLOYER TWX 910 760-1569 ANSBK POTASHNICK CPG

Florida Dept. of Transportation
August 16, 1990
Page 2

unit price of \$161.29 per cubic yard. This unit price of \$161.29 per cubic yard was then multiplied times the number of cubic yards of additional concrete of 77.52 cubic yards, which equals the claimed amount of \$12,503.20.

Should you require any additional information, please contact me.

Very truly yours,

R. B. POTASHNICK

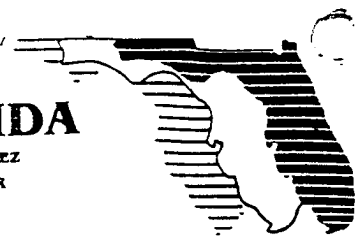


Dennis R. Underwood, P.E.

gāl

Job file

FLORIDA
BOB MARTINEZ
GOVERNOR



DEPARTMENT OF TRANSPORTATION

DUKE WATTS
SECRETARY

P. O. Box 1249
Bartow, Florida 33830
(813) 533-8161 ext. 2222
September 10, 1990

Dennis Underwood
R. B. Potashnick
P. O. Box 8329
Naples, Florida 33941

RE: Additional Approach Slab Quantity Claim
State Job No. 03175-3406
FAP No. ACI-75-4(91)80
WPI No. 1142188
Collier County
Alligator Alley 6 miles West of SR 29 to approx. 2000'
West of SR 29 East of Naples

Dear Mr. Underwood,

This office has completed its evaluation of the claim submitted by your company for the additional concrete used in constructing the approach slabs. FDOT is prepared to offer Potashnick Construction \$4,700.00 as full and final settlement for this claim based on the following analysis.

The plans indicated that the quantity for each approach slab was 24.8 cubic yards. However, actual quantities used were 27.22 cubic yards for each Wildlife crossing approach slab and 26.25 cubic yards for each approach slab at the remaining bridges. A summary of our analysis is attached for your review.

The total amount of concrete required, above plan quantity, was 75.48 cubic yards. No additional effort was needed to form the slabs, nor did the steel requirements change. The pouring and finishing of each slab required only minimal effort. Therefore, prorating the unit price to a cubic yard price is not a fair and equitable settlement. However, FDOT is willing to compensate R. B. Potashnick for this material at average invoice cost, plus 10% for handling. This totals to \$4,700.00.

03175-3406
Page Two
September 10, 1990

Please indicate, by your signature of concurrence in the space provided below, if you are in full agreement with this offer. This settlement will be handled by a standard supplemental agreement.

Sincerely,



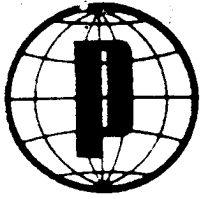
M. H. Dougherty, Jr., P.E.
District Construction Engineer

MHD:RER:ljw
cc: K. J. Blanchard
J. Becker
C. L. Carver

This will certify that Potashnick Construction accepts the offer of \$4,700.00 as full and final settlement for this claim.

AUTHORIZED REPRESENTATIVE

DATE



Potashnick

R.B. POTASHNICK • POTASHNICK CONSTRUCTION, INC.

GENERAL CONTRACTORS

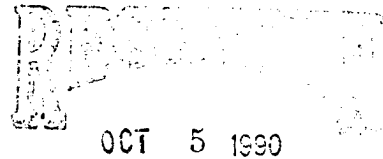
October 3, 1990

Florida Dept. of Transportation
P. O. Box 1249
801 N. Broadway
Bartow, FL 33830

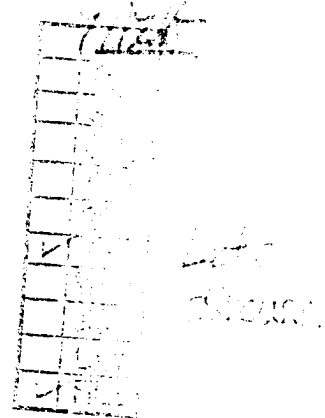
ATTN: Mr. M. H. Dougherty, Jr., P.E.
District Construction Engineer

Gentlemen:

RE: Additional Approach Slab Quantity Claim
State Project No. 03175-3406
F.A.P. No. ACI-75-4(91)80
Contract No. 16694
W.P.I. No. 4141413
I-75, Collier County



CONSTRUCTION DEPARTMENT
BARTOW, FL



R. B. Potashnick acknowledges receipt of your letter dated September 10, 1990, regarding the above referenced claim.

Potashnick will agree with the D.O.T.'s analysis of the total amount of extra concrete required of 75.48 cubic yards. Potashnick does not agree with the statements that no additional efforts were required to form the slabs, nor does Potashnick agree that the pouring and finishing of each slab required only minimal effort.

It is obvious, in order to increase the thickness of the approach slabs in excess of that which was originally anticipated, it would require more square feet of forming materials and since forming labor is based on manhours per square foot of forming, the forming labor would increase. Pouring labor is directly related to the volume of concrete poured; that is to say, each cubic yard of concrete poured requires a certain number of labor manhours. Finishing costs are related to the area of finishing required. The area of the approach slabs was not altered, only the thickness. However, the cost of finishing increases due to the additional time required to pour extra cubic yards of concrete, since the finish crew is on hand while the concrete is being poured.

Since it is not reasonable to state that an extra cubic yard of concrete does not require forming, pouring and finishing, R. B. Potashnick feels that he should be paid for the furnishing, forming, pouring and finishing of the additional concrete required in the approach slabs.

P.O. BOX 190

CAPE GIRARDEAU, MO 63702-0190

314-334-3081

Florida Dept. of Transportation
 October 3, 1990
 Page 2

Potashnick does concur that the reinforcing steel requirements were not changed and therefore, Potashnick incurred no additional cost in regard to the reinforcing steel portion of the approach slabs. Potashnick's cost for the furnishing and placing of reinforcing steel in the approach slabs was \$0.3443 per pound, (See attached subcontract agreement). The total pounds of reinforcing steel required per each approach slab was 2,188 pounds.

Therefore, R. B. Potashnick hereby amends his claim regarding the approach slab quantity as follows:

| | | |
|---|---|---------------------|
| Original Bid Price for Approach Slabs | - | \$4,000.00 per each |
| Cost for Furnishing & Placing Reinforcing Steel (\$0.3443/lb X 2,188 lbs/slab) | - | \$ 753.33 per each |
| | | <hr/> <hr/> |

| | | |
|--|---|---------------------|
| Net Amount for Furnishing Materials, Forming, Pouring & Finishing Concrete for Approach Slabs | - | \$3,246.67 per each |
|--|---|---------------------|

Unit Cost per Cubic Yard = \$3,246.67/slab : 24.8 cy/slab
 = \$130.91 per cubic yard

TOTAL CLAIMED AMOUNT = \$130.91/c.y. x 75.48 c.y. = \$9,881.09

If you have any questions or wish to discuss this matter further, please feel free to contact us.

Very truly yours,

R. B. POTASHNICK

Dennis R. Underwood

Dennis R. Underwood, P.E.

gal

Enclosure

xc: Mr. C. L. Carner
 Fort Myers, Florida

FLORIDABOB MARTINEZ
GOVERNOR**DEPARTMENT OF TRANSPORTATION**BEN G. WATTS
SECRETARY

P. O. Box 1249
Bartow, Florida 33830
(813) 533-8161 ext. 2222
November 1, 1990

Mr. Dennis R. Underwood
R. B. Potashnick
P. O. Box 190
Cape Girardeau, MO 63702-0190

RE: Approach Slab Quantities Claim
State Job No. 03175-3406
FAP No. ACI-75-4(91)80
WPI No. 1142188
Collier County
Alligator Alley, 6 mi. East of SR 29 to approx. 2000'
West of SR 29 East of Naples

Dear Mr. Underwood;

The revised claim submitted by Potashnick, for additional concrete used in constructing the approach slabs, has been reviewed. FDOT agrees with a portion of this claim, but not its entirety. The following discussion is provided to clearly disclose FDOT's position on this matter.

Potashnick has asked to be compensated, at a cubic yard price, for each cubic yard of concrete needed above the amount specified in the plans for approach slabs (Lump Sum). The basis for this claim is the additional costs absorbed while forming, pouring, finishing and the cost of the concrete itself. FDOT has already recognized that the additional concrete was needed and an offer of compensation was made. However, the remaining elements need to be addressed more thoroughly.

First, the claim refers to the additional forming that was necessary due to the increased quantity. Specifically that more labor and time was needed because the square footage of forming increased. Our calculations show this to be true, but not to the magnitude that the claim represents. Only a small increase in material and labor was needed to form each approach slab. Therefore, FDOT is willing to compensate Potashnick for the increase in the forming if provided with sufficient supporting documentation.

Next, Potashnick is seeking indemnification for the extended pouring time based on the general rule that the more concrete poured, the more time needed. This would be the case if cranes and buckets were used and the volume of concrete was high. But, in this instance, the concrete was dumped from trucks by chutes and was small in quantity. FDOT made an effort to place a value on this portion of the

claim; however, the additional time generated was so minute that it could not be quantified.

Finally, Potashnick is asking to be compensated for finishing time. Since no basis could be found for additional pouring time and the area to be finished did not increase, FDOT does not agree with this portion of the claim.

I hope this correspondence clearly conveys how FDOT arrived at our decision. Please resubmit this claim with any additional data that is relevant. However, if no pertinent data is available, the original offer of \$4,700.00 for full and final settlement still stands.

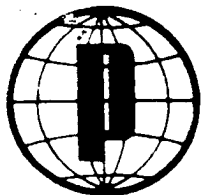
Sincerely,



Marshall H. Dougherty, Jr. P.E.
District Construction Engineer

MHD:RER:ljw

cc: K. H. Blanchard
Harry Rice
C. L. Carner



Potashnick

R.B. POTASHNICK • POTASHNICK CONSTRUCTION, INC.

GENERAL CONTRACTORS

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NOV 19 1990

November 15, 1990

Florida Department of Transportation
P.O. Box 1249
801 N. Broadway
Bartow, FL 33830

CONSTRUCTION DEPARTMENT
BARTOW, FL

*We may need
to meet w/
Mr. Underwood*

YAZH

| | |
|-------------------------------------|------|
| <input type="checkbox"/> | LAP |
| <input type="checkbox"/> | CON |
| <input type="checkbox"/> | ENG |
| <input type="checkbox"/> | PER |
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| <input type="checkbox"/> | MAN |
| <input type="checkbox"/> | ENV |
| <input type="checkbox"/> | LW |
| <input checked="" type="checkbox"/> | FILE |

Attn: Mr. Marshall H. Dougherty, Jr., P.E.
District Construction Engineer

Gentlemen:

Re: Approach Slab Quantities Claim
State Project No. 03175-3406
F.A.P. No. ACI-75-4(91)80
Contract No. 16694
W.P.I. No. 4141413
I-75, Collier County

Potashnick acknowledges receipt of your letter dated November 1, 1990, regarding the above referenced claim.

The Florida Department of Transportation has admitted that there was an error in the plan quantities shown on the plans for the concrete required per approach slab. The error in the Department of Transportation plan quantities of 75.48 cubic yards represents an 8.5% increase. The Florida Department of Transportation has further agreed that Potashnick was required to furnish, form, pour and finish the extra amount of concrete due to the error in the plan quantities.

Potashnick has taken his bid price for furnishing, forming, pouring and finishing the concrete per approach slab, lump sum, and proportioned the lump sum price per each approach slab to a cubic yard price and then multiplied the proportioned cubic yard unit price times the increased cubic yards to arrive at the claimed amount. Potashnick recognized that the reinforcing steel did not change and therefore, the reinforcing steel was deleted from the price.

The method utilized by Potashnick to arrive at a fair and equitable adjustment for the error in the plan quantity is in accordance with Section 9-3.3, Subsections 9-3.3.1 and 9-3.3.2 of the Florida Department of Transportation Specifications for Road and Bridge Construction, 1986.

Therefore, due to the fact that the Department of Transportation recognizes the increase in the quantity of concrete in the approach slabs, and based on the

P.O. BOX 190 CAPE GIRARDEAU, MO 63702-0190 314-334-3081

Florida Department of Transportation
Attn: Mr. Marshall H. Dougherty, Jr., P.E.
November 15, 1990
Page 2

reasons submitted previously, and in accordance with Section 9-3.3, Subsections 9-3.3.1 and 9-3.3.2, Potashnick is entitled to his claimed amount of \$9,881.09.

Very truly yours,

R. B. POTASHNICK

Dennis R Underwood
Dennis R. Underwood, P.E.

slp

xc: Mr. C. L. Carner
Fort Myers, Florida

FLORIDA

STATE OF FLORIDA
TALLAHASSEE



DEPARTMENT OF TRANSPORTATION

605 Suwannee Street, Tallahassee, Florida 32399-0450

BEN G. WATTS
SECRETARY

22

Feb file

P. O. Box 1249
Bartow, Florida 33830
(813) 533-811 ext. 2223
December 13, 1990

Dennis Underwood
R. B. Potashnick
P.O. Box 190
Cape Girardeau, MO 63702-0190

RE: Additional Quantity Claim (Approach Slabs)
State Job No. 03175-3406
FAP No. ACI-75-4(91)80
WPI No. 1142188
Collier County
Alligator Alley, 6 miles West of SR 29 to approx. 2000'
West of SR 29 East of Naples

Dear Mr. Underwood:

Evaluation of the resubmittal of the above referenced claim has been completed. The Department is prepared to offer Potashnick \$5,551.34 as full and final settlement of this issue. I hope the following discussion clearly conveys how this decision was achieved.

The Department does acknowledge that preparing for and placing the additional concrete did require a certain degree of effort, as stated in your letter dated November 15, 1990. However, we cannot agree that the effort expended to increase the volume of concrete by 9% was as labor intensive as stated in your claim. Manpower and equipment did not change, only a small amount of labor and materials was needed to increase the volume of each slab. The Department is prepared to compensate Potashnick, in an equitable manner, for the material and additional labor involved.

The Department, in an attempt to establish crew sizes and production rates for forming, pouring and finishing, utilized the "Means Heavy Construction Cost Data, 1990 Edition" as a source of reference. This is a well established and accepted publication for determining construction cost. I have attached the summary of our analysis for your review.

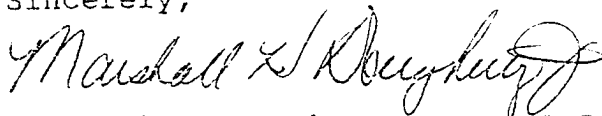
Another point brought forward by Potashnick was that Section 9-3.3, Subsection 9-3.3.1 and 9-3.3.2 of the Standard Specifications entitles Potashnick to the full amount claimed. These sections are solely intended for the

Additional Quantity Claim
State Project No. 03175-3406
Page Two
December 13, 1990

adjusting of "Lump Sum" items and are not applicable to "Each" items; therefore, these sections do not apply to this particular case.

The amount that the department can validate is \$5,551.34. Please indicate, by your signature of concurrence in the space provided below, if you are in full agreement with this offer. This settlement will be handled by a standard supplemental agreement.

Sincerely,



Marshall H. Dougherty, Jr., P.E.
District Construction Engineer

MHD:RER:ljw
cc: Mr. K. Blanchard
Mr. Harry Rice
Mr. C. L. Carner

This will certify that Potashnick Construction accepts the offer of \$5,551.34 as full and final settlement for this claim.

authorized Representative

Date