

**FDOT DISTRICT FIVE**  
**REGIONAL DISPUTES REVIEW BOARD**  
**RECOMMENDATION, SEPTEMBER 26, 2006**

Mr. Richard Henderson, P.E.  
Project Manger  
Granite Construction Company  
4337 South John Young Parkway  
Orlando, FL 32839

Mr. Michael Lausier, P.E.  
Senior Project Engineer  
Metric Engineering  
4335 South John Young Parkway  
Orlando, FL 32839

RE: **I-4 / John Young Parkway Interchange**  
FIN: 242493-1-52-01  
Contract No. T-5043  
FAP No. FL 48001R  
Orange County

Gentlemen:

The Contractor, Granite Construction Company (Granite), and the Florida Department of Transportation (FDOT) have asked the FDOT District Five Regional Disputes Review Board (the Board) to determine entitlement on the following two issues.

The first issue is relating to the application of anti-graffiti coating to concrete mechanically stabilized earth (MSE) walls, having a fractured fin finish.

The second issue relates to having to apply multiple coats of an elastomeric coating material to the interiors of the steel box girders on Ramp A in order to achieve the specified thickness, rather than one coat as anticipated.

In both instances the work was performed by a Granite Subcontractor, Gemstone, LLC. Position papers and written rebuttals were reviewed by the Board and a hearing held in Orlando on September 19, 2006.

**Hearing Attendees**

The Board:  
George Seel, Chairman  
Jimmy Lairscey  
Mike Bone

Granite:  
Richard Henderson, Granite  
A. J Perez, Granite  
Cameron R. Jewell, Gemstone  
Rich Doyle, Gemstone

FDOT:  
Amy Scales, FDOT  
Michael Lausier, Metric (CEI)  
Richard Large, Metric

## **CONTRACTOR'S CLAIMS:**

### **ISSUE NO. 1:**

The pay unit for the anti-graffiti coating is square feet. The fins on the wall surface are  $\frac{3}{4}$ " high, have a  $\frac{1}{2}$ " wide tip and a base that is  $\frac{3}{4}$ " wide. Granite claims that the method of measurement should be the developed area that includes the tips of the fins, both sides of the fins and the distance between the fins at their base. Both sides agree the developed area is 1.72 times the projected area (wall length x wall height). The Contractor presents the following in support of its position:

1. The anti-graffiti coating is specified in a Technical Special Provision (TSP). The TSP calls for payment under Bid Item No. 563-4 (non-sacrificial anti graffiti coating). The bid item is paid for by the square foot but there are no methods of measurement for this item described in the TSP or the Standard Specifications.
2. Section 9-1.3.1, Determination of Pay Areas, in the 2000 Standard Specifications offers several ways to determine pay areas – among them “along the surface of the completed work within the neat lines shown on the plans”. Granite cites, in particular, the last sentence of this section, “The Engineer will use the method or combination of methods of measurements that reflect, with reasonable accuracy, the actual surface area of the finished work”.

### **ISSUE NO. 2:**

The Contract Documents included a “Technical Special Provision” (TSP) introducing a special coating material not on the Departments Approved Products List. The contractor’s understanding of the TSP indicated that the MAP-color coat was to be applied to the specified thickness in one coat. The TSP repeatedly refers to coat, not coats.

Paint coordination meetings were held in June, 2004, to discuss the materials and application necessary to achieve the final coating thickness. As a result of these meetings, and the pre-painting meeting held on February 16, 2005, a revised TSP was issued. This revised TSP stated that the desired thickness of the MAP-color coat could possibly be achieved in two coats. This revised TSP was distributed to all parties concerned, and several issues were raised and answered during the April 11, 2005 time period. Actual painting of the inside tubs on Ramp A was accomplished during the April - May time period in 2005.

On August 26, 2005, a Field Supplemental Agreement (FSA #6), was issued and approved by the Contractor and the Department that amended the TSP for the elastomeric coating of the structural steel. Under TSP section 5.0, APPLICATIONS, Section 5.2, MAP-Z Primer, the note is modified to state “Two coats are required to achieve the dry film thickness of 3 to 5 mils.” FSA #6 was executed as a “no-cost” SA by both the Department and the Contractor.

**DEPARTMENT'S POSITION:**

**ISSUE NO 1:**

The Department contends that the payment quantity in square feet for the coating is the projected area of the MSE wall (height x length) with no allowance for surface texture or corrugations. .

The Department presents the following in support of its position:

1. The prime contractor and its sub knew in advance that the wall has a fractured fin finish.
2. The prime contractor and its sub also knew in advance that the "standard" method of payment for applied finishes on walls is the horizontal times the vertical dimension of the wall.
3. The Basis of Estimates is a public document and it clearly states that measurement for Item 563 is "the projected area of the wall (height x length) or surface, with no additional allowance for surface texture".
4. Article 9-1.2, Method of Measurements, states the "Engineer will take all measurements horizontally or vertically". Taking a depth measurement of the fin would contradict this requirement. Further, the taking of a depth measurement is contrary to Article 9-1.3.1 which calls for using length x width.

**ISSUE NO. 2:**

In it's rebuttal to issue No.2, the Department states that there was no statement in the original TSP that indicated the number of coats required to produce the required mils of thickness. Further, FSA #6, executed as a "no-cost" Agreement, clearly includes the language that "The Department and the Contractor agree that the contract time adjustment and the sum agreed to in this document constitute a full and complete settlement of the matters set forth herein, including all direct and indirect costs for equipment, manpower, materials, overhead, profit and delay relating to the issues set forth in this document."

**FINDINGS OF THE BOARD:**

**ISSUE NO. 1:**

The Board finds that the Department, in preparing the bid documents, did not include a clear description of how anti-graffiti coating applied to the fractured fin surface would be measured for payment.

The Department has long followed a practice of describing methods of measurement in the special provisions, plans and specifications. While the Basis of Estimates serves FDOT in preparing contract documents and in administering the project, it is not a document bidders are expected to rely on.

In the absence of language in the documents specifically describing how the square footage for Item 563-4 is measured, the Board finds Article 9-1.3.1 controlling. In stating "The Engineer will use the method or combination of methods of measurements that reflect, with reasonable accuracy, the actual surface area of the finished work" the Board finds that using the developed area is appropriate in this case.

Further, the Board sees no language in the total of 9-1.3.1 that prohibits using the developed area. Contrary to the Department's position, Article 9-1.3.1 does not prohibit taking a "depth" measurement, as a depth measurement can be horizontal or vertical.

**ISSUE NO 2:**

Coating of the interior of the tubs on the Ramp A bridge had already been achieved prior to the Contractor executing the no-cost Field SA #6 on September 2, 2005. This SA is specific in addressing the first field coat, stating "two coats are required to achieve the dry film thickness of 3 to 5 mils." Granite relinquished any right to recover for Issue No. 2 upon executing this Supplemental Agreement.

**RECOMMENDATIONS OF THE BOARD:**

**ISSUE NO. 1:**

The Board finds that Granite is entitled to have the pay area for Item 563-4 calculated using the developed area of the fractured fin finish of the MSE panels. This entitlement includes treating the "fractured" surface at the tip of the fin as a smooth surface with no allowance for undulations.

**ISSUE NO. 2:**

The Board finds no entitlement for the Contractor in the matter of having to apply multiple coats to achieve the specified mil thickness of the coating required.

The Board sincerely appreciates the cooperation of both parties in these matters. Please remember that a response to the RDRB and the other party of your acceptance or rejection of the Board's recommendation is required within fifteen days. Failure to respond constitutes an acceptance of the recommendation.

Respectfully submitted,

FDOT District Five Regional Disputes Review Board  
George W, Seel, Chairman  
Jimmy Lairscey  
Mike Bone

Signed for and with the concurrence of all Board members

George W. Seel, Chairman