

## DISPUTES REVIEW BOARD RECOMMENDATION

20 August, 2003

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Ref: SR-91, (Florida's Turnpike) From MP 76.334 to MP 77.398 Contract No: T8001, Financial Project No: 409289-1-52-01. Disputes Review Board hearing regarding additional compensation for Dewatering.

Dear Sirs:

The Florida Department of Transportation and Modern Continental South, Inc. (MCS), requested a hearing concerning the above referenced issue. The Contractor contends that the Department did not properly address dewatering in addendum number 2 nor did they adequately inform the bidders of the geological conditions. The Department states that the Contractor did not encounter any conditions different than those shown on the plans and the addendum. A hearing was held at the Departments CE&I Consultants office on 19 August 2003. Both parties agreed that the board was to determine if the contractor was entitled to additional compensation. Both parties presented their case to the Board.

### CONTRACTOR'S POSITION

We will state the Contractors position by referencing and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Contractor.

The Contractors position paper has the following statements and references to document their claim for entitlement.

FDOT specifications, 1.3 Definitions sub-heading "Contract Documents", state that the addenda or other information mailed to or otherwise **transmitted to the prospective bidder prior** to the receipt of bids are deemed as part of the contract.

Two of the questions in the addendum specifically addressed the issue of dewatering.

The first one was question Number 4. A contractor expressed the problems that would be encountered when trying to dewater to the specifications for construction of the barrier wall footings. The contractor went on to give a rough estimate of the dewatering costs that could be anticipated just for the barrier wall footings. He gave a rough estimate of \$138,000 to \$500,000. The response to his questions was; *'We also believe that the construction could be performed without dewatering if done in the dry season. Pumping of water from the excavation should be anticipated.'*

It is evident from the response that the engineers/owners did not want the contractors to include the costs for dewatering in their bids.

The second one was question Number 7. A contractor expressed concern over the post footings being in close proximity to the R/W line and he asked if there was an easement. He referred to drawing SB-11]. This drawing depicts the option for the spread footing. This contractor was specifically referring to the option to install spread footings. The response to his question was *'There is no easement. Dewatering below the level of construction is not anticipated.'*

As a result of these responses, which were at bid time part of the contract documents, it was decided to exclude any dewatering costs other than minor pumping in our estimate. To include major dewatering costs in the estimate, when the contract documents were saying that it would not be required, would have made our bid non-competitive.

In summary, it is our position that the foundation for our claim lies in the Engineer/Owner's failure to properly address the questions in addendum number 2 of the contract and to adequately inform the bidders of the geological conditions that would be encountered during the construction.

It does not matter that dewatering was addressed in the Supplemental Specifications. The responses to the questions raised at bid time are part of the Special Provisions, which govern over the Supplemental Specifications.

In the hearing the contractor made the statement that they had looked at the site prior to bidding. The group making the site visit was the area manager, a company official and the estimator for the company. After this site visit and in preparing their bid MCS made the decision that the only dewatering that would be required was minor pumping.

### **DEPARTMENT'S POSITION**

We will state the Departments position by referencing and paraphrasing their position paper and input from the hearing. Should the reader need additional information please see the complete position paper by the Department.

The Departments position paper has the following statements and references to document their claim for entitlement.

Addendum No. 2, Pages 2 and 3 of 4, Question 4 specifically addresses dewatering for the traffic barrier foundation only. This question is not related to the construction of the NWSF. Therefore, the response to this question, which is "We also believe that the construction could be performed without dewatering if done in the dry season. Pumping of water from the excavation should be anticipated," only pertains to dewatering for the traffic barrier foundation and not NWSF.

The contract documents did not define the amount of water that would have to be removed to comply with the Specification requirements. Nor did the contract documents define the geological layers (the only information provided with the borings is a general description and relative density of the materials).

It is the Department's position that the Contractor did not encounter any site conditions that were different from these shown in the Contract Documents (including the Addendum). The Contractor is responsible for the design of an adequate dewatering system. The costs and time impacts are due to the fact that the dewatering system was not adequate.

### **DISPUTES REVIEW BOARD RECOMMENDATION**

The Board is governed in our decision making process by the plans, specifications (standard, supplemental, technical, special), and the contract. Therefore our recommendation is based on the above documents.

The Board has reviewed all the information provided by the Department and MCS. We listened to all the parties at the hearing held on 19 August 2003. After reviewing all the data and listening to the testimony we have determined that there is no entitlement to the Contractor. Our recommendation is based on the following facts.

It is incumbent upon the Contractor to examine the plans and the site of the proposed work. This requirement is expressly spelled out in the Supplemental Specifications 2-4 page 45 *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*

*The Department does not guarantee the details pertaining to borings, as shown on the plans, 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 Contractor did in fact visit the job site as he stated in the Hearing. What the Contractor apparently did not take note of was the relationship between the water level of the canal and the proposed noise wall footer elevation. The Contractor stated in the Hearing that he was familiar with doing work in South Florida. With that stated familiarity the Contractor should have known dewatering would be necessary for the placement of concrete in the noise wall footer.

The Contractor is required to construct the noise wall spread footers according to plans and specifications. Supplemental Specifications (for this contract) 455-25 and 455-28 state:

*Construct reinforced concrete spread footing foundations, including dewatering when necessary, excavating to the required limits, compacting the underlying soil as required, and constructing seals when required.*

*The Contractor is responsible for the design, installation, and operation of an adequate dewatering system to dewater*

*excavations for spread footings. Use a well point or well system. Submit a dewatering plan to the Engineer for his records before beginning construction. Use well points or wells where the piezometric water level is above an elevation 3 feet (1.0 m) below the bottom of the excavation. Maintain the water table 3 feet (1.0 m) or more below the maximum depth of excavation.*

The Contractor stated that the geological conditions presented in the contract documents are not what they encountered in performing the work. The soil boring data sheets SB-4 to SB-7 did show some cores having "brown and gray sandy limestone" present. The Contractor stated in the hearing that he observed the presents of rock (lime stone) on the west bank of the canal. He said that they encountered rock in their excavations.

Therefore with the core borings showing limestone in some cores and the contractor observing limestone like rock on the west bank of the canal the Contractor should have expected lime rock to be present in the noise wall footer area.

The Board unanimously reached the recommendation and reminds the parties that it is only a recommendation. If the Board has not heard from either party within 15 days of receiving this recommendation, the recommendation will be considered accepted by both parties.

Submitted by the Disputes Review Board

Don Henderson, Chairman    John Nutbrown, Member    William Downs,  
Member

Signed for and with concurrence of all members



Don Henderson, PE