

Regional DRB Hearing

Placeres Construction, Inc. vs. FDOT District Six

"ADA Improvements (Sidewalk) along State Road 922"

FDOT Financial Project No. 429761-1-52-01

Contract No. E-6G64

County: Miami-Dade

"Claim No. 4, Use of Shoring Equipment for Drainage Excavations"

July 11, 2014

9:30 AM

Members of the Regional Disputes Review Board:

Kenneth E. Fusch, PE, Chairman.

James W. MacLaughlin, PE

James R. McNew

Project Information:

Type: Design, Bid, Build Designer: C. H. Perez & Assoc. CEI: Pinnacle Consulting

Date of Award: 2/15/2012 Contract Amount: \$185,432.76 Duration: 70 days

Scope of Work: ADA Sidewalk Improvements and Drainage Installation at Intersection

Location: NE 123rd Street from W. of North Bayshore Drive to E. of North Bayshore Drive

1st Day of Work: 5/21/2012 Last Day of Work on Project: 11/15/2012

Date of Default Action against Contractor by FDOT: 12/12/2012

I.

ISSUE IN DISPUTE

The issue in dispute as submitted to the Regional Disputes Review Board is whether or not the Contractor (Placeres Construction, Inc., or PCI) is entitled to compensation for providing shoring equipment during excavation work to facilitate the installation of drainage structures and pipe.

Contractor's Position: Specifically, PCI discovered unstable soils when excavating for the installation of drainage structures and pipe. The lack of stability of the slopes of the excavations required the Contractor to obtain shoring equipment and materials to provide support for the sides of the open excavations. Without shoring, a potential unsafe situation would be created for both the work crews and the traveling public. The Contractor believed the slopes of the excavation could fail and possibly cause the collapse of the adjacent roadway.

Placeres sought advice and guidance from the CEI, but was told that it was the Contractor's responsibility to determine what method(s) would work best to provide stability for the sides of the excavations and to carry out that method. However, Placeres stated that the absence of soils information in the plans led him to make the assumption during the bidding period that the soils in question were stable. Placeres thus concluded that no shoring equipment, trench boxes, sheet piling, or dewatering operations would be necessary during the excavation work and the installation of drainage. (See Placeres Construction Position Paper)

In summary, Placeres Construction maintains that it is entitled to compensation for providing shoring equipment and materials because the absence of soils (geotechnical) information in the bid package led him to assume that none would be required.

FDOT's Position: District Six representatives, on the other hand, felt that the request for compensation had no basis since the temporary work of erecting shoring, using trench boxes, driving sheet piles, or conducting dewatering operations were considered to be part of the Contractor's *means and methods* of work. As noted in the plans (plan sheet 8, note 7) and specifications, this type of temporary work to facilitate the Contractor's drainage installation is not compensable by the Department. (See District Six Position Paper)

In addition, the absence of soils information in the bid package was not a critical omission in the plans, but rather a decision made by the Department that such information was not necessary for the drainage work to be installed. Furthermore, whether or not soils information was provided, it was still the Contractor's responsibility to provide whatever temporary shoring was necessary to provide a safe working area.

In summary, District Six maintains that the responsibility of providing whatever temporary equipment and materials as may be required to stabilize the sides of open excavations was the obligation of the Contractor in terms of both cost and time.

Regional DRB Responsibility: As requested by the Contractor and the Department, the Regional Board convened a Hearing to make a recommendation regarding “entitlement” on the issue in dispute. The Board did not consider the matter of quantum in regard to this issue. Nothing said by the Board during the Hearing, or contained in this written recommendation, should be construed as an endorsement of the amount of compensation sought by the Contractor.

The Board’s recommendation is based on its reading of the Position Papers submitted by the parties, and the information learned from the participants during discussions at the Hearing. The Hearing was not recorded. A list of the attendees was prepared for the Board’s files.

II. ASSESSMENT OF CONTRACTOR’S POSITION

The following items were considered by the Board to be **significant factors** in the Contractor’s position. Items are paraphrased for clarity, with the Board’s comments following each item.

- 1) Contractor did not receive any geotechnical reports during the bidding period

Comments by the Board: The Board concurs with this statement.

- 2) The plans provided no soils information for prospective bidders

Comments by the Board: The Board concurs with this statement

- 3) Existing field conditions required stabilization and/or support for side walls of trenches when installing structures S-4A, S-4, and associated 18" RCP.

Comments by the Board: From photographs available to the Board, it appears that open excavations did require some method of shoring or trench boxes to stabilize or support the slopes. The plans included an MOT plan for the excavation of the trench across NE 123rd Street. At least one alternate MOT plan was developed by the CEI for use by the Contractor.

- 4) The designer failed to exercise *due care* in performing services for the FDOT since no soil stability information was provided to the bidders.

Comments by the Board: The allegation that the designer failed to exercise *due care* is a judgment factor, and the Board does not concur with this allegation. The FDOT reviewed the plans prior to bid and accepted the work as complete and ready for bidding. Not every set of plans that involves drainage work along an urban roadway contains soils information.

5) The designer failed to provide a design for the reinforcement of soft soils at the project site as required by the FDOT Plans Preparation Manual (PPM).

Comments by the Board: Section 31.2, *Contract Plans Content*, of the PPM as cited in the Contractor's Position Paper pertains to the design of geosynthetic reinforced soil slopes which are usually part of the permanent works in a highway or bridge project. This method of reinforcing side slopes is not normally used by contractors as part of the temporary methods employed when excavating and installing drainage structures and pipe. Therefore, the Board finds that this item is unrelated to the issue at hand.

6) The absence of soils information entitled Placeres to proceed on the assumption that shoring equipment and materials would not be required for this project.

Comments by the Board: The Board does not concur that this assumption by Placeres is the only logical conclusion that could be made. An alternate conclusion could be that the soil stability conditions were unknown or not available, and therefore the bidders should (a) conduct a site investigation during the bidding period, (b) review hydrological conditions in nearby Biscayne Bay (such as tidal range, average tides, or visual evidence of underground water intrusion into the work site), and (c) include an estimated cost for shoring of the trench in the bid.

7) The roadway had been in use by the public for many years and Placeres had no reason to believe that the underlying soils were anything but stable.

Comment by the Board: The Board does not concur that this assumption by Placeres is the only logical conclusion that could be made. The Contractor's assumption proved to be incorrect.

Conclusions based on Assessment of Contractor's Position: The Contractor's reliance on the absence of soils information as the basis for shifting the responsibility for the cost of shoring for trench excavation to the FDOT is not considered valid. For typical drainage structures and pipe installations, it is not uncommon in FDOT projects for geotechnical information, such as soil borings, to be omitted from the plans. Such information is more common in projects involving bridges, building foundations, overhead sign structures, high mast lights, or other large structures.

III. ASSESSMENT OF THE FDOT POSITION

The following items were considered by the Board to be **significant factors** in the FDOT position. Items are paraphrased for clarity, with the Board's comments following each item.

1) The installation of temporary shoring to stabilize the sides of an excavation is considered to be part of the Contractor's *means and methods* of work. It is the Contractor's responsibility to provide a safe work site for both the work crews and the traveling public. This work is not compensable by the FDOT.

Comments by the Board: The Board concurs with these statements.

2) If technical support is necessary to design and install shoring equipment for excavations, it is the Contractor's responsibility to hire these services from a qualified specialty engineer. It is not the Department's responsibility to provide this information to the Contractor in the plans.

Comments by the Board: The Board concurs with these statements.

3) The Contractor made no attempt to perform a site investigation during the bidding period even though he expressed concerns about the absence of soils information. The Contractor's bid was based solely on a review and study of the plans.

Comments by the Board: Statements made by the Contractor during the Hearing.

4) Soils information was provided to the Contractor during the construction period from the adjacent project, which included six soil borings. These borings provided the classification of soils at various depths and a notation where the water table was found upon the completion of each boring. The closest boring was approximately 50 ft. from the west end of the project limits.

Comments by the Board: This soils information may have been useful to the Contractor when he was considering what temporary measures to take during construction to stabilize the sides of the trench excavation, but it was of no value to him when preparing his bid. The Board considers this information to have been provided too late for the Contractor's use.

5) In response to the Contractor's concerns that the original MOT plan would not work, the CEI prepared an alternate MOT plan. This alternate plan included an extension of working hours from 6 ½ hour shifts during the day to a full 69-hour period over the weekend of 27-30 July 2012. However, because of weather conditions, the work scheduled for that weekend was postponed. Later, the Contractor reevaluated this alternate MOT plan and determined that it may not provide sufficient work space for his equipment and work crews. Therefore, this alternate plan was never implemented by the Contractor.

Comments by the Board: Unfortunately, no additional MOT plans were developed by the CEI or Contractor that both parties felt would work in excavating and installing Structure S-4A and the RCP crossing. The Board believes that both parties would have benefitted from the development of a new MOT plan; for example, one with only a single travel lane in each direction (plus a dedicated left turn lane) with a traffic shift. (See plan sheets 21 & 22, phases I & III)

6) The Contractor's claim included costs incurred by Placeres to restore and repave the existing roadway after installing Structure S-4A and the associated 18" RCP. This work covered approximately 505 SF of roadway pavement. The Department denied this part of the claim costs.

Comments by the Board: The Board reviewed Section 125-11, *Site Restoration*, of the 2010 FDOT Standard Specifications for Road and Bridge Construction since it pertains to this portion of the claim. The Board does not support the Contractor's request for additional compensation for restoration and repaving of this area of the roadway.

Conclusions based on Assessment of FDOT Position: The FDOT's reliance on the plans and specifications that placed the responsibility on the Contractor for the *means and methods* of work is considered valid by the Board. This responsibility includes the cost of materials and labor for various temporary works, the design of such works by a speciality engineer (if needed) hired by the Contractor, and the time required for such works to be implemented.

However, the specifications do provide for additional compensation to the Contractor for the removal of unsuitable materials and for providing limerock and A-3 material in the excavated trench adjacent to the drainage structures and pipe, when circumstances warrant.

IV.

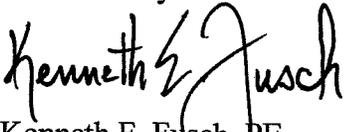
RECOMMENDATION

The Board finds that the Contractor is not entitled to receive compensation for providing shoring equipment and materials to facilitate the excavation work for the drainage installation. This type of temporary work was considered by the Board to part of the Contractor's *means and methods* of work, and therefore is not compensable by the FDOT.

In addition, the Board recommends that no additional compensation be made by the Department for site restoration work and repaving across the roadway where the trench excavation was made.

This Recommendation is the unanimous decision of the members of the 2014 Regional Disputes Review Board.

Submitted by:


Kenneth E. Fusch, PE
Chairman, 2014 Regional Board

Date of Recommendation:

7/24/2014

Distribution:

Placeres Construction, Inc.
FDOT District Six