

Florida Department of Transportation  
Gabriella Molina-Corbin, P.E.  
Midway Operations Engineer  
Midway Operations Center  
17 Commerce Blvd  
Midway, FL 32343-6601

Peavy & Son Construction Co., Inc.  
Lee Lasseter  
P.O. Box 2369 / 39 Schwall Road  
Havana, FL 32333

March 7, 2015

**RE: BOARD FINDINGS - Regional Dispute Review Board Hearing  
FIN#: 42893915201; Contract#: T3467; District Three; Leon County; I-10  
Resurfacing; Borrow Issue**

**Date of Hearing:** March 6, 2015

**Hearing Venue:** Midway Operations Center, Midway, FL

#### **Issue Summary**

The issue before the Board involved a dispute as to whether the Contractor is entitled to compensation for additional borrow material, manpower and equipment that was required in order to construct the inside shoulders of the project.

The parties were unable to resolve the issue and requested the Regional Dispute Review Board to schedule a hearing, which was held on Friday, March 6, 2015 at the Midway Operations Center. The Parties submitted position papers and rebuttals to the Board prior to the hearing. Both parties made oral presentations to the Board, and several rebuttals were voiced on each side in an orderly fashion.

#### **Contractor's Position**

The contractor (Peavy) incurred \$38,587.28 in unanticipated additional costs for which they are entitled to be recompensed because the borrow material was not shown in the plans. Although Shoulder Treatment 1 (Standards for Construction) addresses placement of excavated turf and topsoil filling low areas and voids at the edge of the pavement or along the outer edge of the sod strip, the Standards do not provide for the condition where there are substantial and pre-existing drop-offs. On this project, the amount of dirt that was missing underneath the sod strip averaged roughly six (6) inches over the majority of the length of both shoulders.

Moreover, there was nothing in the plans that identified the existence of the substantial drop-offs, or that a substantial amount of borrow would be needed to complete the work. There were no cross-sections provided by the department (FDOT) that might show that a drop-off was present on the inside shoulders of both the east-bound and westbound roadway. There is a pay item for borrow material, but use of that was limited on this project to guardrail and median crossovers. In fact, as explained in the Standards, Shoulder Treatment 1 does not provide for a pay item for a six-inch Prepared Soil Layer. Although there is a pay item for "Performance Turf, Sod", this item does not address the severity of the erosion that had taken place prior to, and during, construction.

The Contractor provided ample reference documents and explanatory text to support their position.

#### **Owner's Position**

The position of the department is:

- 1) FDOT did not receive notice of Differing Site Conditions (DSC) prior to the contractor beginning shoulder clipping operations, and thus was not afforded the opportunity to confirm or refute the contractor's assertion. To date, Peavy has failed to provide documentation of

their purported notice predating commencement of their operations, or any proof that the claimed drop-offs existed prior to those operations.

- 2) The drop-off conditions adjacent to the inside shoulders were in fact created by the documented clipping operation that commenced on May 18, 2014, approximately six weeks prior to Peavy's first notification of the problem, which arrived on July 1, 2015. The contractor's failure to utilize excavated topsoil exacerbated any problem caused by the clipping operation, and so FDOT is not responsible for the problem and therefore not responsible for providing any additional compensation for any extra borrow material required to meet the intent of Index 105, Shoulder Treatment 1.

### **Board Findings**

The first paragraph of Subsection 5-12.2.1 states "Where the contractor deems that additional compensation ...is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer..., the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based..." It further states that "If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment and time, the contractor waives the claim for additional compensation..."

Sheet 3 of the Project Plans shows the Typical Section for the project. This typical Section refers interested parties to the Construction Standards, Index 105, Treatment 1. Index 105, Sheet 1 describes Treatment 1. On that page, General Note 1.A. States "If trenching under sod is necessary to achieve the required 1" drop-off, excavated turf and topsoil are to be used for filling voids and low areas at the edge of pavement or for flushing along the edge of the sod..." General Note 1.B. adds "Payment for sod, excavation of turf and topsoil, and for backfill of this material under Treatment 1 is to be included in the contract unit price for Performance Turf..."

The cited contract documents in the preceding two paragraphs both work against the contractor's case when compared to the facts presented in this hearing, which are agreed to by all. First, Peavy did not provide FDOT with notification "in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based." Second, the General Notes instruct FDOT not to pay for effort by the contractor to prepare the shoulder to take a layer of sod and leave a drop-off of one inch.

Based on the information presented, the Board finds **no entitlement** to additional compensation for the Contractor.

Respectfully Submitted,

Regional Dispute Review Board, District Three

R. Edward Minchin Jr., RDRB Chairman  
Bill Deyo, RDRB Member  
Greg Xanders, RDRB Member

Signed by the Board Chairman with Agreement and Consent of all

  
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