



DIRECTOR'S CLAIMS BOARD
ODOT Project 6004(07)
Claim 03-076004-03
Final Quantities
Decided: April 27, 2012

On Wednesday, February 15, 2012 at ODOT's Central Office in Room 4A, the Director's Claims Board ("Board") heard oral presentations of BECDIR Construction Company ("BECDIR" or "Contractor") and ODOT District 3 ("District") relative to the subject issue. Prior to the oral presentations and in accordance with the Dispute Resolution and Administrative Claim Process set forth in the contract, the Board received written documentation from the Contractor on September 19, 2011 and then from the District on November 25, 2011.

The Board consisted of Megan O'Callaghan, P.E., Deputy Director, Division of Construction Management; Bill Ujvari, P.E., Administrator, Office of Production; and Keith Geiger, P.E., District Construction Engineer, D-5.

The District 3 representatives at the hearing were: Nick Donofrio, Jim Burchfield, Beth Wilson, Dustin Vousden, and Perry Ricciardi.

BECDIR Construction Company was represented by Robert Pekarski and Tony Burt.

Pam Clawson, P.E., Claims Coordinator, Division of Construction Management served as the Secretary of the Board. Freddie Cruz, EIT, Division of Construction Management and Tom Pannett, Office of Chief Legal Counsel observed the hearing.

PROJECT DESCRIPTION:

This project improved 0.89 km of USR 250 by replacing the existing shoulders and medians; planing and resurfacing existing pavement; rehabilitating and widening the existing structure over the Huron River; replacing the existing structure over the abandoned railroad; and upgrading guardrail, drainage and traffic control.

BECDIR Construction Company was awarded the contract on July 11, 2007. The contract was executed on August 6, 2007. The original contract amount was \$4,246,899.72 and the original contract completion date was May 30, 2009. The completion date was subsequently revised to July 17, 2009 and the contract amount is \$4,527,115.92.

CLAIM OVERVIEW:

During the finalization process, the Contractor and District were unable to reach agreement on the following four pay items:

- Reference #3, Item 202 Pavement Removed (Contractor requests additional \$1,545.00)
- Reference #62, Item 304 Aggregate Base (Contractor requests additional \$5,777.20)
- Reference #86, Item 642 Removal of Pavement Marking
(Contractor requests additional \$29,476.62)
- Reference #124, Item 511 Concrete Misc: Beam Seat Repair
(Contractor requests additional \$8,588.80)

REFERENCE #3, Item 202, PAVEMENT REMOVED

SUMMARY OF THE CONTRACTOR'S POSITION

The Contractor, measuring from the center line of USR 250, saw cut to remove the southbound concrete pavement shoulder as shown on the plans. However, there was no concrete pavement at that location. As a result of this plan error, the District directed the Contractor to saw cut again, closer to the center line, in order to expose the existing reinforced concrete base and to establish a sound pavement edge. BECDIR put the Department on notice of a dispute and kept force account records for this work.

On May 14, 2009 BECDIR submitted a Step 2 dispute to District 3 for \$4,396.07 for the District-directed additional saw cutting based on its force account records. On May 21, 2009, the District Dispute Resolution Committee's (DDRC) offered to compensate BECDIR \$1,532.16 to resolve this dispute. The DDRC's decision was specific to additional saw cutting costs.

On June 12, 2009 BECDIR requested clarification of the settlement offer by asking if the offer was "in addition to payment for the actual quantity of pavement removed under bid reference 3 for the extra Department directed removal?" The District responded by letter dated July 10, 2009 the "Step 2 settlement offer of \$1,532.16 was compensation above payment previously made for pavement removal". BECDIR interpreted this response as yes and assumed it would be reimbursed both the \$1,532.16 for the additional saw cutting and \$1,545 for the additional 103 sm of pavement removed. BECDIR accepted the offer and Change Order #34 was executed. BECDIR did not have the District's final quantities at this time. It was only after BECDIR reviewed the District's final quantities for Reference #3, Item 202 Pavement Removed that it realized it was not being paid for the quantity removed in the disputed area.

On February 9, 2011 BECDIR requested a Step 2 hearing on final quantities. By its decision dated June 24, 2011, the DDRC denied BECDIR's request for an additional 103 sm of pavement removed due to the additional saw cut. BECDIR claims it is entitled to an additional \$1,545.00 for 103 sm of pavement removed.

SUMMARY OF THE DISTRICT'S POSITION

The plans indicated the existing 2.4 m shoulders were concrete overlaid with 102 mm asphalt. The shoulders were actually 102 mm of asphalt on a granular base making the shoulder removal easier for the Contractor. The District did not pursue a reduction in the bid cost for this easier pavement removal.

BECDIR damaged the edge of the asphalt overlay on the concrete pavement with their equipment. This required additional saw cutting to establish a sound edge.

Because of the inaccurate plans the DDRC decided there was joint culpability and offered \$1,532.16 to settle this claim for extra work. Change Order #34 was executed and contained the following language "...The Contractor received additional compensation for removing deteriorated pavement along the edge of the shoulder replacement as per the attached DDRC decision. The Contractor's written acceptance of the agreement is also attached. This is full compensation." The change order did not mention saw cutting or inefficiencies.

DIRECTOR'S CLAIMS BOARD FINDINGS

Facts:

In light of all the evidence presented, the Board concludes this dispute is primarily a question of contract interpretation regarding the scope of the Step 2 dispute that was resolved upon the execution of Change Order #34. The Board concludes the majority of the facts contained in the submissions of the parties and presented by the parties during the hearing are consistent and can reasonably be relied upon to form the basis of this decision. The following facts were central to the issue of entitlement:

1. The Contractor saw cut the edge of pavement on the southbound roadway at the location specified

- in the plans. However, there was not a sound concrete face at that location. The plans inaccurately located the edge of the original concrete pavement as well as the composition of the shoulder.
2. The District directed the Contractor to saw cut the shoulder to find a sound edge. This required additional saw cutting and removal work.
 3. On May 14, 2009 BECDIR submitted its force account records for additional saw cutting and pavement removal, the cost was calculated to be \$4,396.07.
 4. The District did not keep force account records.
 5. The DDRC's Step 2 decision for Dispute 03-076004-01 dated May 21, 2009 repeatedly refers to "additional saw cutting". The DDRC "determined there is an equally shared responsibility by both parties for the additional saw cutting based upon the failure to field verify the sound edge of pavement." The DDRC awarded the Contractor damages in the amount of \$1,532.16.
 6. In its letter of June 12, 2009, BECDIR asked if the offer was "in addition to payment for the actual quantity of pavement removed under bid reference 3 for the extra Department directed removal?"
 7. The District responded by letter of July 10, 2009 the "Step 2 settlement offer of \$1,532.16 was compensation above payment previously made for pavement removal." The letter continued on to state "BECDIR did not offer an argument for entitlement for repairs completed at the end of October, 2008...the DDRC was not aware that BECDIR was arguing for entitlement for the stated repair work."
 8. BECDIR accepted the District's Step 2 decision on January 6, 2010.
 9. Change Order #34 was executed on January 27, 2010 to "compensate the Contractor for the accepted Step 2 dispute resolution agreement for southbound shoulder removal limits, 03-076004-01." The change order stated in part: "The Contractor received additional compensation for removing deteriorated pavement along the edge of the shoulder replacement as per the attached district dispute resolution committee decision...This is full compensation."
 10. This change order was executed prior to the District and BECDIR finalizing quantities.
 11. BECDIR submitted a letter dated February 9, 2011 regarding final quantities.
 12. The District issued a Step 1 decision regarding final quantities on March 2, 2011. Regarding Reference No. 3 Pavement Removed they agreed to an additional 86.64 sm due to incorrect deductions. The District denied 103.79 sm of right shoulder removal as Dispute 03-076004-01 was resolved upon execution of Change Order #34.
 13. The DDRC's Step 2 decision regarding Dispute 03-076004-03 Final Quantities dated June 24, 2011 denied BECDIR's request for an additional 103 sm of pavement removed as "this item was the subject of a previous Step 2 hearing under Dispute No. 03-076004-1...The offer that was made and accepted in Dispute No. 03-076004-1 is essentially for this same request."

Conclusions:

As documented in the 2009 DDRC decision for Dispute 03-076004-01, plans specifically showed the location of the edge of the concrete pavement. The Contractor sawed at that location. There was not sound concrete at the location indicated on the plans. This was indeed a plan error. The plans showed concrete shoulders on the typical sections. The shoulders were actually full depth asphalt on aggregate base. These shoulders had to be removed back to the edge of existing concrete pavement to get a sound face.

As mentioned above, the DDRC's Step 2 decision regarding Dispute 03-076004-01 repeatedly referred to "additional saw cutting". According to the decision, the DDRC "determined there is an equally shared responsibility by both parties for the additional saw cutting based upon the failure to field verify the sound edge of pavement." The DDRC awarded the Contractor damages in the amount of \$1,532.16. The Board finds the scope of Dispute 03-076004-01 was limited to the Contractor's request for "damages for the additional sawcutting." The Board finds BECDIR's subsequent question seeking clarification and the District's response to be unclear. However, Change Order #34 clearly compensated "the contractor for the accepted Step 2 dispute resolution agreement for southbound shoulder removal limits, 03-076004-01" and references the attached Step 2 decision for details. Therefore, since Dispute 03-076004-01 was limited to additional saw cutting and Change Order #34

resolved Dispute 03-076004-01, then Change Order #34 was limited to additional saw cutting.

Dispute 03-076004-03 Final Quantities BECDIR disagreed with the Department's final quantity for Pavement Removed. The difference in quantity resulted from the Department's refusal to pay for the additional right shoulder pavement removal.

DAMAGES

Based on the above findings and the fact that the District did not have any field data or dimensions to refute this amount the Board finds BECDIR is entitled to an additional 103 sm at \$15.00/sm for a total of \$1,545.00

REFERENCE #62, Item 304, AGGREGATE BASE

SUMMARY OF THE CONTRACTOR'S POSITION

This quantity dispute has existed with this reference item since January 5, 2010. "At that time, BECDIR provided detailed field measurements which were established by measuring the surface area of the asphalt base course for the areas with quantity differences." The Contractor claims "this method provides the most accuracy and has been used on past ODOT projects and takes in account that aggregate base may be placed outside the plan requirements is not calculated in the total volume."

The District's aggregate base summary dated September 29, 2008 indicated less than a 1% variance from BECDIR's. Since that time the Department has presented two more quantity summaries, dated March 2, 2011 and May 6, 2011. The District submitted two more quantity summaries on March 2, 2011 and May 6, 2011. These summaries were "...an attempt at a plan take off from the cross section provided in the plans." The District's calculations do not account for the additional pavement removal previously discussed or the variable shoulder widths. "It is apparent BECDIR's calculations are the only ones that are based on field measurements." BECDIR claims it is entitled to an additional \$5,777.20 for 111.10 cubic meters of aggregate base.

SUMMARY OF THE DISTRICT'S POSITION

The Construction and Materials Specification book (C&MS) 304.07 states: "The Department will measure Aggregate Base by the number of cubic yards (cubic meters) computed from the profile grade and typical sections, compacted in place."

The plan quantities for Item 304 were in error because the designer used the surface area of the pavement and omitted the steps for the Item 301 and Item 442 courses beyond the surface edge of pavement. This resulted in additional quantity.

With regard to Northbound US 250, the District used plan line and grade dimensions adjusted for the plan error and the additional 0.3 meter of pavement width. Thus, the District followed the Contract when measuring the quantity of 304 for payment.

The Contractor used field dimensions of the surface area of Item 301 to calculate the Item 304 quantity placed. The Item 301 cannot be used to calculate the volume of Item 304 as there was not any Item 304 under the Item 301 where the Item 301 was placed on top of the concrete pavement. The Contractor's method of measurement is not at all consistent with the contract.

DIRECTOR'S CLAIMS BOARD FINDINGS

Facts:

In light of all the evidence presented, the Board concludes this dispute is primarily a question of contract interpretation regarding the method of measurement requirements for the subject item of work. The Board concludes that the majority of the facts contained in the submissions of the parties and

presented by the parties during the hearing are consistent and can reasonably be relied upon to form the basis of this decision. The following facts were central to the issue of entitlement:

1. C&MS 304.07 stipulates: "The Department will measure Aggregate Base by the number of cubic yards (cubic meters) computed from the profile grade and typical sections, compacted in place."
2. The District used plan line and grade dimensions adjusted for the plan error and the additional 0.3 meters of pavement width. The District did not field verify these dimensions.
3. BECDIR used field measurements established by measuring the surface area of the Item 301 asphalt base course. The Contractor did not make any adjustments to these measurements.
4. There were field changes and plan omissions that required quantity adjustments.

Conclusions:

C&MS 304.07 sets forth the method of measurement of aggregate base to be computed "from the profile grade and typical sections, compacted in place." This method of measurement requires calculations be performed from the plan and then field verification of these measurements.

The District mentioned several corrections to the plans that were necessary to construct the project as scoped. Calculating the quantity from plan line and grade dimensions alone, without also verifying with field measurements, will not ensure an accurate determination of the actual volume of the material. The Contractor neither computed the quantity from the profile grade and typical sections nor field verified the Item 304. Instead it relied on measuring the surface of the Item 301 asphalt base course in the field.

The Board concludes that neither the District nor the Contractor followed the method of measurement prescribed by C&MS 304.07 and therefore have shared responsibility.

DAMAGES

BECDIR claims 1159.21 cubic meters is the volume of the Item 304 Aggregate Base and the District claims 1048.11 cubic meters is the correct volume. BECDIR claims it is entitled to an additional \$5,777.20. In light of the facts and conclusions set forth above and in an effort to resolve this matter the Board awards Beccdir \$2,888.60.

REFERENCE #86, Item 642, REMOVAL OF PAVEMENT MARKINGS

SUMMARY OF THE CONTRACTOR'S POSITION

C&MS 614.16 Basis of Payment for Maintaining Traffic states "Unless separately itemized, the lump sum price bid for Maintaining Traffic shall include the cost of removing or covering of conflicting pavement markings." BECDIR pointed out this contract provided a separate pay item for 642 Removal of Pavement Markings. Item 642 is the only item available for itemized payment of pavement marking removals. There is no itemized removal of pavement marking listed under Item 614 to distinguish removal of pavement markings for the purpose of maintaining traffic or any other purposes. Since this project had a separately itemized bid item for removal of pavement markings, BECDIR did not include costs for this work in the maintaining traffic lump sum item and could not have been expected to do so. BECDIR claims it is entitled to \$29,476.62 for 4,912.77 meters of pavement markings removed.

SUMMARY OF THE DISTRICT'S POSITION

When this project was first envisioned the resurfacing limits intentionally stopped short of the US 250 T-intersections with State Route 113 East and West. The original plans included some lane reassignments at these locations beyond the resurfacing limits that required Item 642 Pavement Marking Removal. The plans clearly showed where all 98 meters of pavement markings were to be removed on pages 42 and 43 referenced in balloons as RM-1 through RM-6. This quantity was carried to the General Summary and the Proposal. Prior to selling the project it was decided the intersections needed resurfaced as well. A plan note on page 7 added Pavement Planing, Tack Coat, Asphalt

Concrete Surface Course and Pavement Marking, Misc: Restore Intersection Pavement Markings to accomplish this work. Obviously, the milling and resurfacing work negated the need for Item 642 Removal of Pavement Markings. However, the quantity for the removal of pavement markings was inadvertently left in the plans and Proposal as was the information locating the once planned removals on pages 42 and 43.

Item 642 entitled Traffic Paint, is for permanent pavement marking work as opposed to pavement marking removal associated with MOT. C&MS 642.01 states "This work consists of furnishing and applying alkyd or water-based traffic paint according to Item 641, 740.01, 740.02, 740.09, and the additional requirements specified below." C&MS 641.10 states "If specified as a pay item, Remove pavement markings." Again, this is meant for permanent striping removal work, which was non-performed in this project, due to a change in plans. C&MS 641.13 states "The Department will pay for accepted quantities of work performed under Items 642, 643, 644, 645, 646, and 647." Notice, there is no reference to Item 614. Thus, it is clear that Item 642, which reference Item 641, was never intended to be used for conflicting line removal at non-descriptive locations as part of Item 614 Maintaining Traffic. Conversely, line removal work is discussed in 614.11. Furthermore, C&MS 614.16 states: "Unless itemized separately, the lump sum price bid for Maintaining Traffic shall include the cost of removal or covering of conflicting pavement markings and layout, application and removal of pavement markings when required..."

The maintenance of traffic plan required six (6) traffic phases. The maintenance of traffic would require numerous temporary pavement marking revisions and conflicting line removals. The work zone subcontractor's invoice states that the disputed work was for conflicting line removal. The Contractor is not entitled to additional payment for removal of pavement markings.

DIRECTOR'S CLAIMS BOARD FINDINGS

Facts:

In light of all the evidence presented, the Board concludes that this dispute is primarily a question of contract interpretation. The Board concludes the majority of the facts contained in the submissions of the parties and presented by the parties during the hearing are consistent and can reasonably be relied upon to form the basis of this decision. The following facts were central to the issue of entitlement:

1. The 98 meters of Item 642, Removal of Pavement Markings are clearly designated in the plans at specific locations with balloons containing RM-1 through RM-6.
2. This item is listed in the General Summary and Proposal under the Traffic Control section as Item 642, Removal of Pavement Markings.
3. The resurfacing work negated the need for the Removal of Pavement Markings at the specified locations. Therefore, these removals were appropriately non-performed.
4. The Proposal includes a Maintenance of Traffic section. There is no Removal of Pavement Markings itemized in that section.
5. C&MS Item 614 is for Maintaining Traffic and C&MS Item 642 is for Traffic Paint.
6. C&MS 614.16 Basis of Payment states: "Unless separately itemized, the lump sum price bid for Maintaining Traffic shall include the cost of removal or covering conflicting pavement markings and layout, application and removal of pavement markings when required ..." The plans do not set forth separate 614 Items for removal or covering conflicting pavement markings.
7. The Contractor did not ask a pre-bid question regarding the removal of pavement markings.

Conclusions:

This set of plans clearly sets forth the intended locations to remove 98 meters of Item 642 Removal of Pavement Markings. The plan includes three (3) pages of maintenance of traffic notes and nine (9) pages of details for six (6) traffic phases. It is the Board's determination that a reasonable examination of the bid documents would lead a bidder to the conclusion that the 98 meters of Item 642 Removal of Pavement Markings was obviously well below what would be needed for maintaining traffic on this project. The Contractor's claimed 4,912.77 meters of removal of pavement markings is fifty times the

estimated quantity of Item 642 Removal of Pavement Markings set forth in the plans and Proposal. In this situation, if the bidder believes there is an error or omission in the bid documents they have a duty to notify the Department by asking a pre-bid question.

Further evidence that Reference 86, Item 642, Removal of Pavement Markings in these plans was not for maintenance of traffic was the fact that it was listed both in the plans and Proposal under Traffic Control and not under Maintaining Traffic. The Maintaining Traffic section did not have an Item 642 itemized. Perhaps the most persuasive information is the resurfacing work negated the need for the Removal of Pavement Markings at the specified locations. When evaluating a construction claim involving contract interpretation, the contract must be viewed in its entirety and given the meaning imputed to a reasonably intelligent contractor acquainted with the involved circumstances. Applying this standard, it is the Board's determination that the removal of conflicting lines was to be included in the lump sum 614 Maintaining Traffic item.

Since the contract is clear and unambiguous, one need not consider factors beyond the four corners of the contract to aid in the interpretation of the requirements. Both the Contractor and District referenced past practices and other projects as precedent to support their positions. If the contract was silent on the issue, or if there was ambiguity in the contract, the Board could turn to the parties course of dealings to determine if that provided any guidance as to how the Board should interpret or apply the contract. But in the absence of these circumstances, turning to the parties' prior course of dealings is not a reasonable and proper approach for interpretation of the subject contract. Since it is the Board's determination the contract is clear on this issue then there is no need to consider past practice.

The Board reviewed the bids to see if anything could be gleaned from the unit bid prices regarding the bidders' interpretation at the time of bid. For the lump sum Item 614 Maintaining Traffic the bids ranged from \$32,000 to \$120,000. The average bid was \$88,900 with BECDIR being the highest bidder on this item. The Board notes this information is consistent with a contractor that believes the costs for removal of pavement markings are in the Item 614 lump sum and not Item 642.

DAMAGES

Based on the above findings, the Contractor is not entitled to additional compensation for removal of pavement markings.

REFERENCE #124, Item 511, CONCRETE MISC., BEAM SEAT REPAIR

SUMMARY OF THE CONTRACTOR'S POSITION

This work entailed re-facing a portion of the existing abutments along with the placement of new abutment beam seats to the plan elevations. All deteriorated concrete along with a minimum depth of sound concrete was removed. As a result of the field deterioration, the removal limits exceeded the minimum depth requirements. The existing abutment seats were removed by full depth saw cutting to the minimum dimensions provided by the contract plans. In order to provide for a full depth saw cut, the removal limit was a sloped line with strict adherence to the minimum depth requirement of the plan. Therefore, almost all areas of the abutment seats were removed to a greater dimension than the minimum. Also, the existing bridge was lower than anticipated by plan.

The District's method of measurement is not per CMS 511.24 because it does not use actual variable depth dimensions required to capture the true volume placed. BECDIR claims it used the method of measurement in CMS 511.24. "BECDIR's method was to determine amount of material measured in approved vehicles at the point of delivery and to deduct the amount of concrete wasted and used for testing." BECDIR indicates it is entitled to payment for an additional 7.808 cubic meters of concrete beam seat repair totaling \$8,588.80.

SUMMARY OF THE DISTRICT'S POSITION

C&MS 511.24 states: "The Department will measure the appropriate concrete item by the number of cubic yards (cubic meters) determined by calculations from plan dimensions, in place, completed and accepted." The Contractor's method of measurement does not comply with CMS 511.24 and is not an acceptable method of measurement. The District took careful field measurements and this approach was both accurate and reliable. There are no other field measurements of the abutment repair work, other than the ODOT engineer's.

The Contractor is not entitled to additional compensation for additional concrete beam seat repair.

DIRECTOR'S CLAIMS BOARD FINDINGS

Facts:

In light of all the evidence presented, the Board concludes this dispute is primarily a question of contract interpretation regarding the method of measurement requirements for the subject item of work. The Board concludes the majority of the facts contained in the submissions of the parties and presented by the parties during the hearing are consistent and can reasonably be relied upon to form the basis of this decision. The following facts were central to the issue of entitlement:

1. C&MS 109.01 stipulates the Department will measure Cubic Meters as described below unless otherwise specified in the Contract Documents:
"Measured by a three-dimensional volume method. Measure all "loose material" or material "measured in the vehicle" by the cubic yard (cubic meter). Haul material "measured in the vehicle" in approved vehicles and measure in the vehicle at the point of delivery. For this purpose, use approved vehicles of any type or size satisfactory to the Engineer, provided the vehicle's bed is of such type that the actual contents are readily and accurately determined. Unless all approved vehicles on a job are of uniform capacity, each approved vehicle must bear a legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles."
2. C&MS 511.24 stipulates: "The Department will measure the appropriate concrete item by the number of cubic yards (cubic meters) determined by calculations from plan dimensions, in place, completed and accepted."
3. There was no communication between the District and Contractor regarding how this work would be paid.
4. Prior to removing the concrete on the face of the abutment the face was scored with saw cuts to the plan specified minimum depth.
5. The District used field measurements to determine the number of cubic yards. BECDIR used concrete delivery truck ticket volumes, and deducted the amount of concrete wasted and used for testing.

Conclusions:

C&MS 109.01 allows for measurement of material in a truck of known volume as an acceptable way to determine the volume of items of irregular dimensions. However, the opening paragraph of that section states: "...the Department will measure quantities as described below unless otherwise specified in the Contract Documents." C&MS 511.24 sets forth the method of measurement for concrete items to be determined by calculations from plan dimensions, in place, completed and accepted. The Department will make deductions for portions of primary structural members embedded in concrete. The Department will not make deductions for the volume of reinforcing steel, conduits or embedded piles. Superstructure concrete includes the concrete in deflective parapets not having a metallic railing. The Department may measure deck concrete by either volume or area using plan dimensions." This method of measurement requires calculations be performed from the plan and then field verification of these measurements.

BECDIR proposes that the pay volume of concrete for this item of work be determined by adding up the concrete delivery tickets and deducting for waste and testing. For this type of difficult-to-determine

volume the three-dimensional volume calculation in C&MS 109.01 could have been acceptable if both parties had agreed to this method and processed a change order modifying the contract method of measurement prior to performing the work.

Since the contract is clear and unambiguous, one need not consider factors beyond the four corners of the contract to aid in the interpretation of the requirements. The District's office file documentation does not include dates and the contemporaneous field measurements are indeterminable and do not include dates or signatures. However, the Board reviewed the District's sketches and calculations of the concrete volume for the beam seat repair and found several examples where dimensions used in the calculations differed from the plan dimensions. The Board also found the District used dimensions measured from a diagonal line. Therefore, the Board concludes the District used field measurements. BECDIR did not produce any field measurements.

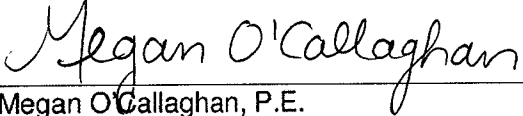
The Board concludes the best evidence available that is consistent with the contract specified method of measurement is that provided by the District.


DAMAGES


Based on the above findings, the Contractor is not entitled to additional compensation for concrete beam seat repair.

This recommendation is submitted this 27th day of April 2012.

Director's Claims Board:


Megan O'Callaghan, P.E.
Deputy Director
Division of Construction Management


Bill Ujvari, P.E.
Administrator
Office of Production Management


Keith Geiger, P.E.
District 5 Construction Engineer

Approval of this recommendation:


Jerry Wray
Director, Ohio Department of Transportation

5/2/2012
Date