



Ohio Department of Transportation

1980 West Broad Street, P.O. Box 899, Columbus, Ohio 43216-0899

August 21, 2002

Frank R. Bodor
Attorney at Law
157 Porter Street, NE
Warren, Ohio 44483

Re: Deputy Directors Board Decision on Soda Construction Company, Project No. 181(99)

Dear Mr. Bodor:

The contract disputes raised by your client, the Soda Construction Company, on Mahoning County project 181(99), were heard by the Deputy Directors Board on August 14, 2002. The decision of the Board on your client's request for additional compensation is as follows:

Issue #1: Nonperformance of Waterline Work, Reference Numbers 271 and 272.

The **Board recognizes entitlement** to the profit that Soda Construction Company would have made from the waterline work, reference numbers 271 and 272. The Board finds that the deletion of this work from project 181(99), at the request of the waterline owner, the Consumers Ohio Water Company, and its subsequent award of the changed work to another contractor, constituted a breach of contract under Ohio law. Accordingly, the Soda Construction Company is entitled to compensation for its loss of profit that resulted from this breach of contract.

The **Board does not recognize entitlement** to the expected revenue from this work that was anticipated by the Soda Construction Company to cover its project and home office overhead. Ohio law limits compensation for breach of contract to lost profit.

The **Board does not find entitlement** to the requested reimbursement of legal fees. The Department does not compensate a contractor for legal fees incurred.

The **Board awards \$147,468** for the profit the waterline work was reasonably expected to generate. This amount was determined by an audit of the Soda Construction Company financial records, conducted by a CPA employed by the Department.

The **Board also awards \$31,757** in interest on the award for lost profit. This interest was calculated according to ORC 126.30 for the period starting May 1, 2000 and ending on the expected date of payment, September 13, 2002. The interest rates used are those determined according to ORC 5703.47. If payment is delayed beyond the stated interest period due to procedures of the State Controlling Board, the award will be increased to add interest for the extended payment period.

Soda Construction Company Mahoning County Project No. 181(99)

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Issue #2: Building Demolition and Debris Disposal.

The **Board did not find entitlement** for the alleged costs incurred by Soda Construction Company because the local fire departments would not burn all the buildings slated for demolition on project 181(99). The Board found that the documented evidence presented showed that the Department had fulfilled its obligations for asbestos removal and that asbestos was not an impediment to burn all the buildings. Further, pursuant to the controlling specification, the Board found that the method of demolition was left up to the Contractor.

The Board found that the District did not wrongfully deny burial of demolition debris on-site. The District only denied burial on-site of demolition debris that was not suitable for incorporation into the Work. The balance of the demolition debris was disposed by Soda Construction at a landfill of their choice according to Ohio law and the contract for project 181(99).

Issue #3: Lost Overhead Compensation Due to Nonperformances of Bid Quantities.

The **Board did not find entitlement** for the claimed revenue from bid quantities that were deleted from the contract because they were not needed. The Board finds that section 109.03 limits compensation for altered quantities to that provided in 104.02 for reductions greater than twenty-five percent. The District properly calculated and paid this 104.02 adjustment.

The Board also awarded an additional **\$15,000** to the Soda Construction Company as a general cost of settlement in exchange for their agreement to accept the Board decision as the final resolution of the disputes on project 181(99) and to waive all legal rights for any additional compensation based on these issues.

The Board will direct the District to process a change order totaling **\$194,225** to pay Soda Construction Company the award of the Board and to waive all rights to additional compensation. We expect approval of the necessary State Controlling Board request on September 9, 2002 which will enable payment of the award.

The review and the decisions of the Deputy Directors Board on the cited issues constitute completion of the administrative claim process within the Department.

Respectfully,

Vernon Dunlap, P.E.
Secretary of the Deputy Directors Board

c: W.Gemayel, M.Darwish, M.Kelsey, L.Conomy, R.Campbell, C.Bishop, D.Lazar, R.Paradise, J.Parthemer, L.Styers, E.Holley- Soda Construction Company, Claim File