



**Director's Claims Board
ODOT Project 597(08)**

Claim 12-080597-06

Additional Costs for Compaction of 304 Material

Decided: December 2, 2010

On Tuesday, September 14, 2010 at ODOT's Central Office in Room 4A, the Director's Claims Board ("Board") heard oral presentations of Anthony Allega Cement Contractor, Inc./The Great Lakes Construction Co., A Joint Venture ("AACC/GLCC,JV" or "Contractor") and ODOT District 12 ("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 June 23, 2010 and then from the District on July 14, 2010.

The Board consisted of William Lindenbaum, P.E., P.S., Deputy Director, Division of Construction; Halle Jones Capers, P.E., Deputy Director Division of Highway Operations and Tim McDonald, P.E., Deputy Director, Division of Production Management.

The District 12 representatives at the hearing were Mark Gable, P.E., Randy Over, P.E. and Ron Valdman, P.E.

John Allega and Gary Thomas represented AACC/GLCC,JV.

Chet Lyman, Esq., Assistant Legal Counsel, Office of Chief Counsel served as the Secretary of the Board.

Pam Clawson of ODOT's Division of Construction Management observed the hearing.

PROJECT DESCRIPTION:

This project reconstructs and widens SR-2 in Lake County through the cities of Eastlake, Willoughby and Mentor. The project consists of approximately 4.5 miles of 11.5" of concrete paving, using the alternate concrete paving bid and Supplemental Specification No. 888. This project also includes the rehabilitation of seven bridges, construction of four retaining walls and noise walls. The contract was signed March 20, 2009 with an original completion date of October 15, 2011. The original amount of the contract was \$85,819,416.31. The current amount of the contract is \$89,135,073.07. Approximately 76% of the work is complete.

CLAIM OVERVIEW:

ODOT personnel performed compaction testing and required the Contractor to compact and water the 304 base after the trimming and fine grading operations had been completed. The Contractor is claiming the contract requires compaction testing be performed prior to trimming and fine grading. The Contractor alleges this change in inspection and testing procedure caused extra work valued at **\$10,354.06**.

SUMMARY OF THE CONTRACTOR'S POSITION:

During the course of the placement of the 304 Aggregate Base the District changed its compaction testing procedure. Initially it had performed compaction testing prior to trimming and fine grading. In October, 2009, following a placement and grading error, the District began performing compaction testing after the trimming and fine grading operations had been completed. The Contractor argued that this change in procedure caused additional rework.

Further the Contractor argues that this change in compaction testing is contrary to the contract requirements when placing Portland Cement Concrete Pavement using slip form construction. The Contractor pointed to C&MS Section 451.05B which states: "**After the subgrade or base is placed and compacted to the required density...**cut the areas for pavement and the areas that will support the paving machine to the plan elevation." Based on this specification the Contractor argued ODOT is required to perform its compaction tests prior to trimming and fine grading.

The Contractor did acknowledge there was a section of 304 Aggregate Base where, due to its grading error, rework was required and subsequent tests did not pass until more watering and rolling was performed. This section was removed from the claim.

SUMMARY OF THE DISTRICT'S POSITION:

On or about October 16, 2009 the Contractor's trimming and fine grading operation required the removal of a large amount of 304 Aggregate Base. The amount of removal was more than normally expected for a fine grading operation and was determined to be a result of a grading error. The 304 Aggregate Base had previously been satisfactorily compacted as was demonstrated by compaction tests. Due to the removal of a significant amount of 304 Aggregate Base ODOT's Project Engineer directed the Contractor to perform additional compaction. On October 21, 2009 the District issued a direction to the inspectors that "For the purpose of consistency, the project will take compaction tests after the finishing operation each day."

The District argues that the Contractor's inability to maintain the true line and grade during the placement of the 304 Aggregate Base resulted in excessive material being removed during the fine grading operation. This excessive manipulation of the compacted base warrants compaction testing being performed after fine grading operations.

C&MS 304.05 states: "The Engineer may check the production material density before or after the finishing operations." These tests are taken to ensure the material meets the density requirements. The disturbed aggregate left by the subgrade trimmer should be compacted to restore surface density. The rolling operation smoothes the surface and re-establishes the profile. This is not "additional compaction" but completed the contract item of work, the District argued. The District stated C&MS 451.05.B does not supersede the requirements of C&MS 304.05 nor prohibit the Engineer from checking the material density at any time.

The District acknowledged the overtrimming of the subgrade on October 15, 2010 was an anomaly.

DIRECTOR'S CLAIMS BOARD FINDINGS:

Facts

The Board finds that the majority of facts contained in the submissions and presentations by the parties are either consistent or undisputed and can be relied upon to form the basis of this decision. The following facts are central to the decision:

1. On or about October 15, 2009 the Contractor placed 304 Aggregate Base. This material was tested for compaction and met requirements. However, the grade was incorrect requiring removal of nearly 6" of 304 Aggregate Base. Additional compaction tests were performed following removal.
2. On October 21, 2009 the District issued instructions that "the project will take compaction tests after the finishing operation each day".
3. C&MS Section 451.05.B states: "After the subgrade or base is placed and compacted to the required density, use an automatic subgrading machine to cut the areas for pavement and the areas that will support the paving machine to the plan elevation."
4. Supplement 1015 states: "The Department will perform the compaction tests unless specifically stated otherwise in the contract."

Conclusions

The Contractor was electing to place Portland Cement Concrete Pavement by the slip form method on this project. Section C&MS 451.05.B explicitly states that base is to be cut to the plan elevation after it has been compacted to the required density. Supplemental 1015 assigns the responsibility for moisture density testing to ODOT. The Contractor has the right to rely on information from the Department's compaction tests to make decisions regarding its operations. By ODOT performing testing after the trimming operations the Contractor was performing this work with additional risk not contemplated at the time of bid. The District was within its authority to perform any additional tests it determines to be warranted however the Board determines the District was required to perform compaction tests prior to the trimming and fine grading operations.

The Board determines the Contractor is eligible to recover any costs to perform fine grading and trimming a second time. However the damages submitted by the Contractor are for additional compaction. The Board determines that the Contractor is not eligible to recover costs for additional compactive effort. The Board further determines that the Contractor should be paid for additional trimming and fine grading that it can demonstrate to the District it performed.

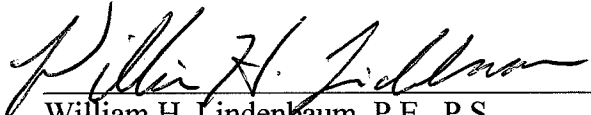
The Board also determines that the District properly required the Contractor to correct its 304 Aggregate Base grading errors. The Contractor is not due nor is seeking reimbursement of costs for these corrections.

DAMAGES:

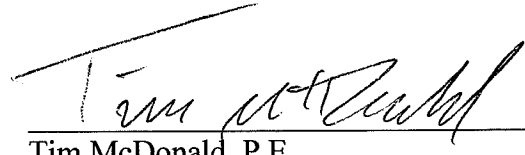
Based on the above findings, the Contractor is not entitled to additional compensation for any additional compaction of the 304 Aggregate Base. The Contractor is entitled to costs for any additional trimming and fine grading that it can demonstrate to the District it performed as a result of compaction testing being performed contrary to C&MS Section 451.05.B.

This recommendation is submitted this 7th day of December, 2010.

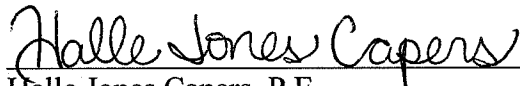
Director's Claims Board:



William H. Lindenbaum, P.E., P.S.
Deputy Director, Construction Management

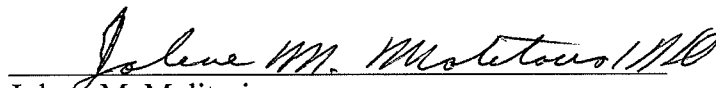


Tim McDonald, P.E.
Deputy Director, Production Management



Halle Jones Capers, P.E.
Deputy Director, Operations Management

Approval of this recommendation:



Jolene M. Molitoris
Director, Ohio Department of Transportation

12/17/10
Date