

1999 DRAFTING REQUEST

Bill

Received: 11/02/1999

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Roessler (608) 266-5300**

By/Representing: **Susan Marcott**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact: **Claims Board**

Alt. Drafters:

Subject: **State Finance - claims agnst st**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Rosendale Farm Equipment, Inc. claim

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 03/09/2000	jgeller 03/10/2000		_____			State
/1			martykr 03/10/2000	_____	lrb_docadmin 03/10/2000		State
/2	kuesejt 03/16/2000	jgeller 03/16/2000	martykr 03/16/2000	_____	lrb_docadmin 03/16/2000	lrb_docadmin 03/16/2000	

FE Sent For: 3/21/00

<END>

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1/?	kuesejt	1 3/10 jg	3/10/99	9/6 11/3 2/10/10			

FE Sent For:

<END>

WISCONSIN STATE SENATE



Carol Roessler
STATE SENATOR

To: Jeffrey Kuesel
From: Sen. Carol Roessler
RE: Claims Board Legislation
Date: Wednesday, Oct. 27

Attached please find a request from a constituent regarding the Claims Board. Please advise me how to proceed. Thank you in advance for your help.

SM

LAW OFFICES

EDGARTON, ST. PETER, PETAK, MASSEY & BULLON

10 FOREST AVENUE

P.O. BOX 1276

FOND DU LAC, WISCONSIN 54936-1276

FAX NUMBER: (920) 922-9091

920-922-0470

A.D. (DAN) EDGARTON
ROBERT V. EDGARTON
RONALD L. PETAK
JOHN A. ST. PETER
KATHRYN M. BULLON
PAUL W. ROSENFELDT

ALLAN L. EDGARTON (1908-1994)
THOMAS L. MASSEY (1935-1995)
GEORGE M. ST. PETER, OF COUNSEL
NEIL HOBBS, OF COUNSEL

October 6, 1999

OCT 07 1999

Senator Carol Roessler
P.O. Box 7882
Madison, WI 53707

Re: Claim of Rosendale Farm Equipment Against
the Department of Administration

Dear Senator Roessler:

I recently spoke to Karen of your office about submitting my client's claim in the form of a bill before the Wisconsin Legislature. My client, Rosendale Farm Equipment, Inc. entered into a contract with the Department of Administration for the construction of a manure storage structure at the Waupun State Prison Farm. Unanticipated soil conditions were encountered during excavation. These conditions necessitated additional excavation and importing of fill beyond what was originally contemplated. There is a dispute regarding whether Division of Facilities Development Project Manager Tom Rhodes approved these measures. The additional cost of excavation and fill in dispute is \$49,776.35, exclusive of interest claimed by the excavation subcontractor.

Rosendale Farm Equipment filed a claim with the State Claims Board in accordance with the procedure called for under the contract and sec. 16.007 and 775.01 of the Wisconsin Statutes. I enclose copies of the statutes for your convenience. I also enclose a copy of the claim that Rosendale Farm Equipment filed with the Claims Board, the Department of Administration's response and the Claims Board's denial of the claim dated August 16, 1999.

At this point, sec. 775.01 of the Wisconsin Statutes indicates that Rosendale Farm Equipment may file an action to enforce its claim upon the refusal of the legislature to allow the claim. It is my understanding that this requires that a bill proposing the payment of the claim be presented before the legislature.


October 6, 1999

Page 2

I seek your help in drafting and presenting such a bill. If there is any reasonable chance that the bill could pass, I would welcome any advice you could provide on improving its chances. If the bill is destined for defeat, I would like to expedite that defeat so that we can move on to the courts. Please do not hesitate to call me if there is any other information I can provide to you on this matter. Thank you for your consideration.

Respectfully,

EDGARTON, ST. PETER, PETAK,
MASSEY & BULLON



Paul W. Rosenfeldt

PWR/jap

Enclosures

cc: Mr. and Mrs. Dennis Pipping

COPY

LAW OFFICES
EDGARTON, ST. PETER, PETAK, MASSEY & BULLON

10 FOREST AVENUE
P.O. BOX 1276

FONDDULAC, WISCONSIN 54936-1276
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RONALD L. PETAK
JOHN A. ST. PETER
KATHRYN M. BULLON
PAUL W. ROSENFELDT

July 8, 1998

Ms. Patricia Reardon
Department of Administration Claims Board
P.O. Box 7864
Madison, WI 53707-7864

Re: Rosendale Farm Equipment, Inc.

Dear Ms. Reardon:

Enclosed for filing on behalf of Rosendale Farm Equipment, Inc. is its Claim for Damages Against the State. Please advise as to when this matter will be heard by the Claims Board.

Respectfully,

EDGARTON, ST. PETER, PETAK,
MASSEY & BULLON

Paul W. Rosenfeldt

PWR/jap
Enclosure
cc: Mr. and Mrs. Dennis Pipping

DEPARTMENT OF ADMINISTRATION
CLAIMS BOARD

CLAIM FOR DAMAGES AGAINST THE STATE

Submit one notarized copy of this form to the Claims Board, P.O. Box 7864, Madison, Wisconsin 53707-7864. Attach proof of loss: copies of all bills, receipts and insurance proceeds; and copies of medical and/or police reports, if applicable. If you have insurance coverage, complete the insurance portion of this form, regardless of whether or not you have submitted claim to your insurance company. Do not request reimbursement for damages paid by your insurance company on this form. If your insurance company wishes to file a claim for reimbursement, they must file on a separate form. If more space is needed for comments, continue on another page and attach. This information will be sent to the appropriate department or agency.

Claimant's Name, Address and Phone Rosendale Farm Equipment, Inc. N5888 Center Road Brandon, WI 53919 920-872-2520	Date of Occurrence May 27, 1998 (Date of Division denial letter see Exhibit A-6, attached)
	State Agency Claim is Against Division of Facilities Development

Statement of Circumstances-Explain how claim arose.

See Exhibit A, attached

Dollar Amount of Claim. Itemize all losses incurred. Attach copies of all bills and/or receipts.

\$49,776.35 (See Exhibit A, Note 1 and Exhibit A-3)

Insurance Coverage on above losses: yes no . If yes, state amount: \$ _____ Amount of Deductible: \$ _____
Vehicle Insurance Company N/A Policy No. _____
Homeowner Insurance Company N/A Policy No. _____
Medical Insurance Company N/A Policy No. _____

I hereby certify that all statements contained herein and on any attachments hereto are true and that the losses claimed were actually incurred.

ROSENDALE FARM EQUIPMENT, INC., by:

Cindy Pipping Pres. 7-6-98
Signature of Claimant Date

Cindy Pipping, President

The above-named claimant personally came before me this day and is known to me to be the person who executed the foregoing instrument and acknowledged the same.

Winfred M. Caramanides 7-6-1998
Notary Public Date

Fond Du Lac County, Wisconsin

My Commission Expires 11-4-2001

EXHIBIT A

Statement of Circumstances

The claimant, Rosendale Farm Equipment, Inc. ("RFE") submitted a proposal for the construction of a manure storage structure at the Waupun State Prison Farm in response to a Request for Proposal issued by the Division of Facilities Development. RFE later entered into a contract for the construction of the structure for the sum of \$102,890 on January 28, 1997. (Exhibit A-1). Among the documents provided to RFE in the Division's Request for Proposal was a site plan, which showed bedrock at depths of approximately 6 to 7 feet below existing grades. (Exhibit A-2).

During excavation for the structure, which is essentially a pit with a concrete base, Division inspector Tom Rhodes detected soils that did not meet contract soil compaction standards because of excessive moisture. The substandard soil appeared to be confined to a fairly small area and RFE suggested that this area be excavated and filled with imported material. Mr. Rhodes rejected this suggestion and insisted that all soil in the pit area be excavated down to the bedrock and removed. As excavation continued, it was found that bedrock depth varied from less than 3 feet to over 8 feet in the pit area, a vastly different geology from that represented in the Division's site plan.

Consequently, RFE called a site meeting. Present at the site meeting were RFE owners Dennis and Cindy Pipping, excavator Roger Krause, Tom Rhodes and State Prison Farm Manager Craig Bresser. Mr. Krause estimated that the cost of the additional excavation and gravel fill needed to comply with Mr. Rhodes' request would be \$30,000 to \$35,000. Mr. Pipping informed Mr. Rhodes that there was no provision in RFE's proposal for this additional work. Rhodes responded that the Division would not approve these additional costs until tests establishing the soil's failure to meet compaction standards were performed by an independent firm.

The tests were performed and the soil failed to pass. At this point, Mr. Rhodes authorized RFE to fill the excavated area with material to be specified by RFE's engineering consultant. The engineer specified 6 to 8 inch diameter "breaker stone" topped with a layer of 1 1/2 inch stone for levelling. Advised of this, Mr. Rhodes instructed RFE to proceed. The actual cost of this additional excavation and fill proved to be \$49,776.35 exclusive of interest accruing at the statutory rate of 5%.¹ (Exhibit A-3).

¹The Krause invoice (Exhibit A-3) indicates a service charge of \$746.65 computed at 18% per annum. RFE contends that this rate is not contractual and this is not enforceable. If RFE is incorrect in this regard, it would claim the resulting additional service charges as well.

Despite RFE's submittal of properly completed pay requests for these additional costs, the Division has refused to pay them. Division Project Manager David G. Kaul's January 22, 1998 letter denying RFE's request for payment is attached and marked Exhibit A-4. Division Administrator Robert M. Brandherm's May 27, 1998 letter denying RFE's request for reconsideration is attached and marked Exhibit A-5.

A few comments about these letters are in order. Mr. Kaul points out that no written change order was issued as required by the contract. Although the conditions of the contract specify written change orders, as is typical, they contain no language that would prevent the parties from amending or waiving any term of the contract by their words or actions. (Exhibit A-6). Mr. Rhodes' oral authorization for RFE to proceed as outlined above amounted to such an amendment.

Mr. Kaul asserts that the site plan put RFE on notice that bedrock was present at a depth of 3 to 4 feet below grade and would impact construction of the pit. Neither Mr. Kaul's interpretation of the site plan nor the plan itself is correct. The plan shows bedrock at depths of 5.8 feet, 6.2 feet and 7 feet in the pit area. Bedrock was actually encountered at less than 3 feet below grade and sloped away to depths greater than 8 feet. Although excessive moisture is often found in soil lying immediately over bedrock, one would not expect to encounter this problem at 4 to 6 feet above bedrock - the closest approach that RFE had any reason to anticipate based on the site plan. In short, the presence of bedrock, as depicted in the site plan, would not have impacted construction in any way. The contractor is not responsible for increased construction costs that result from site conditions which differ from those described in the contract document. Metropolitan Sewerage Commission of Milwaukee County vs. R.W. Construction, Inc., 78 Wis. 2d 451, 255 N.W.2d 293 (1977).

Moreover, the excessive moisture that was encountered was confined to a small area. In such situations, it is typical to excavate the poor soil and replace it. Only at Mr. Rhodes' insistence was the entire pit area excavated down to the bedrock. Mr. Kaul's assertion that RFE's engineer directed this excavation is incorrect. The engineer was only consulted on the subject of soil replacement. Mr. Rhodes deferred to the engineer's recommendation.

Law, equity and the good faith of the people of the State of Wisconsin require that this claim be paid in full.



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DIVISION OF FACILITIES DEVELOPMENT
POST OFFICE BOX 7866
MADISON, WI 53707-7866
608/266-2731
FAX 608/267-2710

CONSTRUCTION CONTRACT

Project No. 96374

Contract No. 9375

THIS AGREEMENT, made and entered into this 28th day of January, 1997, between the State of Wisconsin by its Department of Administration, represented by its Division of Facilities Development, herein called "DFD", and Rosendale Farm Equipment, Inc. doing business as a corporation, of the City of Brandon County of Fond du Lac, and State of Wisconsin hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and arrangements hereinafter mentioned, to be directed by DFD, the CONTRACTOR will commence and complete the construction described as follows:

All Work for Manure Storage Improvements at Waupun State Prison Farm

Base Proposal	\$ 84,690.00
Supplemental Proposal	<u>18,200.00</u>
Contract Amount	\$102,890.00

hereinafter called the "Project", for the sum of One Hundred Two Thousand Eight Hundred Ninety and no/100—(\$102,890.00) and all other work in connection therewith, under the terms as stated in the Contract Documents; and at the CONTRACTOR's own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said Project in accordance with the conditions and prices stated in the Bid Form, Bidding and Contract Requirements, the drawings which include all maps, plats, plans, and other drawings and printed or written explanatory matter thereof, and the technical portion of the specifications therefor, as prepared by Division of Facilities Development, P.O. Box 7866, Madison, WI 53707-7866 herein called the A/E, and as enumerated in the Specification's Table of Contents, all of which are made a part hereof and collectively evidence and constitute the Contract Documents.

The CONTRACTOR hereby agrees to commence work under this Contract on or after a date to be specified in a written "Notice to Proceed" and to complete this work within 60 consecutive calendar days thereafter.

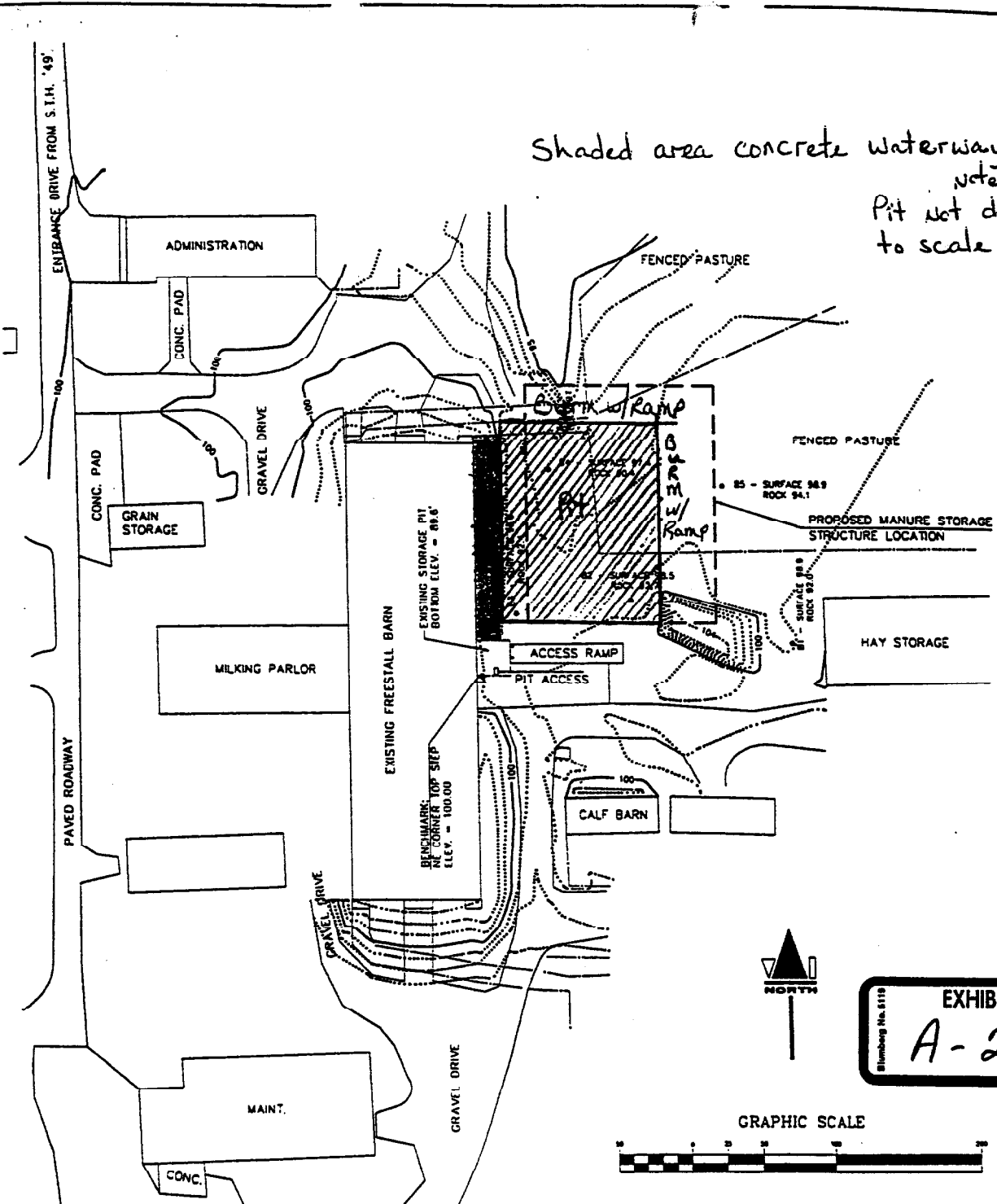
DFD agrees to have the CONTRACTOR paid in current funds for the performance of the contract subject to additions and deductions, as provided in the General Conditions of the Contract, and to account payments on account thereof as provided in Article entitled, "Payments to Contractor" of the General Conditions.

DFD has the delegated power and duty pursuant to Sec. 16.85(l), to act on all matters and for all purposes under this Contract; including additions and modifications therein incorporated.

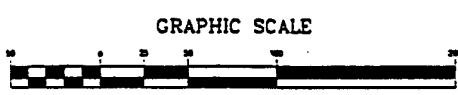


Shaded area concrete waterway.

note:
Pit not drawn
to scale.

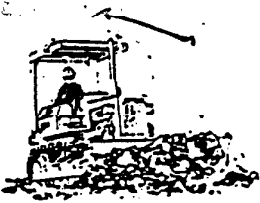


Blumberg No. 8119
EXHIBIT
A-2



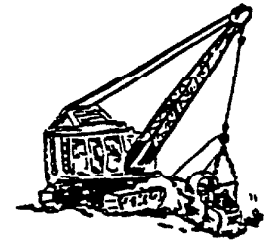
C:\SW\DWG\17201600.DWG

W.D.F.D. WAUPUN STATE FARM SITE PLAN		REVISIONS	
		NO.	DATE
VIERBICHER ASSOCIATES 400 VIKING DR. • P.O. BOX 379 • REEDSBURG WI 53959 • 608-524-8468		FIELD BOOK	FILE NO.
		JOB NO. 3956720	
		SHEET	DWG. NO.
DRAWN BY GLW	CHECKED	DATE 9-27-95	SCALE NOTED
		1 OF 1	1-165-0



Krohn Grading, Inc.

N2707 Welk Road
Markesan, Wisconsin 53946



Phone (414) 398-3322

Date June 30, 1997

Rosendale Farm Equipment Inc.
Dennis Pipping
5888 Center Rd.
Brandon, WI 53919

Invoice No.: 1499

Terms: Net 10 days

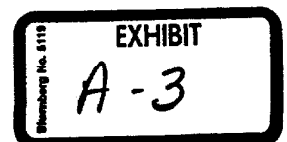
DATE		HOURS	RATE	AMOUNT
	<u>State Prison Farm @ Waupun</u>			
<u>June</u>	1177.29 ton 7/8" crusher run		\$12.78	\$ 15,045.77
	Deduct for part of contract: 337 ton for 6" of gravel 100'x300'		12.78	- 4,307.33
				<u>\$ 10,738.44</u>
	Extra excavation for undercut for bottom of pit because of poor soil			6,825.00
	1458.14 Ton 6" clear stone		15.20	22,163.73
	741.09 Ton 3/4" clear stone		13.56	10,049.18
				<u>\$ 49,776.35</u>
Sept. 18	Late Charges			746.65
				<u>\$ 50,523.00</u>
October 18	Late Charge			746.65
	Total Amount			<u>\$ 51,269.65</u>

Annual percentage rate of 18%

Cindy,

The original bill amount is \$49,776.35

Send separate invoice for lates charges of \$1,493.30





TOMMY G. THOMPSON
GOVERNOR
MARK D. BUGHER
SECRETARY

January 22, 1998

Mr. Dennis Pipping
Rosendale Farm Equipment, Inc.
N5888 Center Road
Brandon, WI 53919

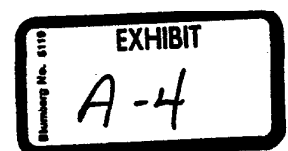
RE: Manure Storage Facility
Waupun State Farm
DFD Project 96374

Dear Mr. Pipping:

This letter is in response to your Request and Certification for Payment No. 5 for the above referenced project. Your request contains a reference to "Cost Overrun - Gravel" in the amount of \$49,776.35. I cannot pay the "cost overrun" because a Change Order to your Contract for this work has not been issued. Also, I have several concerns regarding this request for additional compensation:

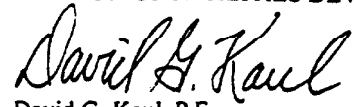
- ◆ The Request for Proposal (RFP) documents requires that the proposals include ALL WORK required to fully complete this structure as a design-build project.
- ◆ You indicated that the design of your structure would meet the USDA Soils Conservation Service (SCS) Specifications and that you were familiar with these specifications from a recently-completed, similar design-build project in Green Lake County.
- ◆ Section IV in the SCS Specifications includes requirements for compacted earthfill to meet gradation, compaction, and minimum depth specifications where rock is present beneath the floor of the structure. The site map provided in the RFP documents clearly indicates that bedrock is present on the site and would impact the structure you proposed with its floor at the indicated elevation of 3 - 4 feet below grade.
- ◆ The RFP documents required rock excavation to be included in the Base Proposal. Due to the presence of bedrock, as indicated in the RFP documents, your design-build proposal should have anticipated and included the need for either rock excavation or the SCS-required special fill below the bottom of the floor slab.
- ◆ The Request for Proposal (RFP) documents requires compaction of all materials of every description to 95% of its maximum density per the Modified Proctor Test. Compaction tests were made on the existing soils by DFD during the excavation of the site and determined that this compaction requirement was not being met. DFD expressed its concern over the lack of compaction. Your design engineer, Kal Siegel of Siegel Engineering (not DFD), directed your excavator to remove the existing soils and replace them with an engineered, structural, granular fill below the bottom slab. It appears that this engineering structural fill may exceed the specifications of the SCS Specifications.

Should you desire to further pursue this claim, please refer to Article 13 Claims of the Conditions of the Contract. Please feel free to call me at (608)267-7993 should you desire to further discuss this matter. I apologize for the length of time it has taken to respond.



Manure Storage Facility
Waupun State Farm
DFD Project 96374, Page 2

Sincerely,
DIVISION OF FACILITIES DEVELOPMENT



David G. Kaul, P.E.
Project Manager

cc: Krause Excavating
Tom Rhodes, DFD Madison Regional Office
Lynn Lauersdorf, DFD
Hamid Khazae, DOC/BFM



STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 101 East Wilson Street, Madison, Wisconsin

Mailing Address:
 Office Box 7866
 Madison, WI 53707-7866



TOMMY G. THOMPSON
 GOVERNOR
 MARK D. BUGHER
 SECRETARY

May 27, 1998

Attorney John A. St. Peter
 Edgerton, St. Peter, Petak, Massey & Bullon
 10 Forest Avenue
 PO Box 1276
 Fond du Lac, WQI 54936-1276

RECEIVED
 MAY 29 1998
 DIVISION OF FACILITIES DEVELOPMENT
 STATE OF WISCONSIN

RE: Manure Storage Facility
 Waupun State Farm
 DFD Project 96374

Dear Mr. St. Peter:

This letter is in response to my Project Manager's denial of your client's claim for additional compensation on the above referenced project. After careful consideration of the materials provided to me by yourself and my staff, it is my determination that the denial of this claim is correct for the following reasons:

- The Request for Proposal (RFP) documents for this design/build project required that all work be included in the contractor's proposal.
- The RFP documents clearly indicated the presence of bedrock at varying elevations under the proposed site. The RFP documents required all rock excavation necessary be included in the contractor's proposal. The use of an engineered granular fill under the structure was apparently used by the contractor to level the site for the proposed structure without the need for rock excavation.
- The RFP required 95% compaction of materials under the structure. The contractor's design engineer required, and specified, the engineered granular fill under the structure.
- The contractor's proposal was for a design based on SCS Standards, which require removal of poor quality soils and replacement with compacted granular materials.
- A proposal for the costs of a Change in the Work had not been requested by the DFD Construction Representative. This would have been a prelude to his consideration of authorizing a Change in the Work. A Change in the Work had apparently not been authorized in accordance with the contract.

Should you wish to further pursue this claim, please refer to Page 4, Article 13 of the Conditions of the Contract and Chapter 775 of the Wisconsin Statutes.

Respectfully,
 DIVISION OF FACILITIES DEVELOPMENT

Robert N. Brandherm, Administrator

cc: David Kaul, DFD Project Manager
 Tom Rhodes, DFD Construction Coordinator
 Lynn Lauersdorf, DFD

EXHIBIT
 A-5
 Numbering No. 6118

**CONDITIONS OF THE CONTRACT
DELEGATED SMALL PROJECTS - JANUARY, 1996
DIVISION OF FACILITIES DEVELOPMENT
DOA-4532(R01.96)**

INDEX

1. Contract Documents
2. Definitions
3. Materials and Workmanship
4. Permits, Regulations, and Taxes
5. Contractor's Obligations and Superintendence
6. Changes in the Work
7. Time for Completion
8. Correction of the Work
9. Owner's Right to Terminate Contract
10. Payments to the Contractor
11. General Guarantee
12. Nondiscrimination/Affirmative Action
13. Claims
14. Insurance

1. CONTRACT DOCUMENTS

- A. The documents listed in the table of contents of this specification or in the Owner's invitation to bid form the contract, in addition to which may be addenda, change orders, and other documents pertaining to the project that are issued after signing the contract.
- B. The intention of the contract documents is to describe the labor, materials, equipment, performance standards, schedules, and costs set forward and agreed to by the Contractor and the Owner. In the event of a conflict or ambiguity in the contract documents, they shall be interpreted as including all necessary work needed for a complete, working installation.

2. DEFINITIONS

- A. "Owner"...The Department of Administration's Division of Facilities Development(DFD) or the Wisconsin State agency that is exercising authority delegated by DFD as prescribed by Section 16.85 Wisconsin Statutes for work on this project only. An Owner's Construction Representative will be designated who will have authority to act on behalf of the Owner for administration of this contract.
- B. "Work"...Defines all labor, materials, and equipment required by the contract documents necessary to produce the end result described therein.
- C. "Substantial Completion"...Defines the point in time when the work is completed to the extent that the Owner can make beneficial use of the work for the purposes intended and the point in time when warranties and guarantees go into effect. There may be a list of minor parts of the work or deficiencies that remain to be completed or corrected following substantial completion.
- D. "Shop Drawings/Submittals"...Defines drawings, product data, samples, schedules, or other information to be submitted by the Contractor to the Owner for approval before fabrication or installation. Shop drawings/submittals needed will be identified during the preconstruction meeting. The Contractor is responsible for assuring the drawing/submittals conformance with the requirements of this contract. Review and acceptance by the Owner does not relieve the Contractor from responsibility for errors or omissions.

3. MATERIALS AND WORKMANSHIP

- A. The Contractor agrees to provide all labor, materials, and equipment in a good-workman like manner in accord with the contract documents and applicable industry standards, and to furnish upon request to the Owner information and test results having to do with the kind and quality of materials.



G. All Work must be complete, tested, and ready for use by the owner prior to Substantial Completion, Contractor shall also provide operating and maintenance instructions for each item of equipment or device installed including parts lists, description of control cycles, and wiring diagrams.

6. **CHANGES IN THE WORK**

- A. No change in the work will be made without the prior approval of the Owner. Other than in emergencies, this approval will be written. All changes will have a firm price, add or deduct, determined before the work is commenced or the Owner will authorize the Contractor to proceed on the basis of actual cost - not to exceed a specific amount - with a total fixed fee of not more than 10%.
- B. No change to the work is to be made by the Contractor other than at the direction of the Owner's Construction Representative.

7. **TIME FOR COMPLETION**

- A. The Contractor agrees that the date of beginning the work and the time of completion are essential conditions to the contract. The Contractor agrees that the work will be prosecuted regularly and diligently and that the time for completion is reasonable.
- B. The Contractor shall keep the Owner informed about work activities, progress, delays, and anticipated completion date. Should delays be caused by reasons beyond the control of the Contractor, an extension of the contract completion date may be requested. Permitting the change will not serve as a waiver on the part of the Owner of any right under the contract. The Contractor will be responsible for damages resulting from delays that were not beyond the Contractor's control.

8. **CORRECTION OF THE WORK**

- A. Labor, materials, and equipment involved in the work are subject to inspection at any time by the Owner. Labor, materials, and equipment that do not comply with contract requirements will be made good at the Contractor's expense. Rejected items will be immediately removed from the site.
- B. If the Contractor neglects to perform the work in accordance with the contract documents, the Owner may, after ten days written notice to the Contractor, make good the deficiency. The Owner will then issue a change order to deduct from the amount owed the Contractor the cost of correcting the deficiency.

9. **OWNER'S RIGHT TO TERMINATE CONTRACT**

- A. Should any provision of the contract be violated by the Contractor or any subcontractor, the Owner may serve written notice on the Contractor of its intention to terminate the contract and, unless the violation ceases and satisfactory corrections are made within ten days, the contract will then terminate. The Owner will notify the contractor of the termination. The Owner may then take over and complete the work by contract or otherwise and may take and use all materials on site necessary to complete the work. The Contractor will be liable for all excess costs involved in the completion.
- B. The Owner shall also have the right to terminate this contract at any time without cause following the expiration of thirty days written notice to the contractor. The contractor shall be paid for all work performed or expenses incurred prior to the date of termination. Expenses must be documented and do not include lost profits. Materials not incorporated into the work shall be turned over to the Owner.

10. **PAYMENTS TO THE CONTRACTOR**

- A. The Contractor and Owner agree that payment will be withheld until substantial completion as a means of providing security for performance-payment in lieu of requiring the Contractor to provide a performance-payment bond.
- B. Upon issuance of a letter of Substantial Completion, 70 percent of the contract amount will be paid to the Contractor. The remaining 30 percent will be paid upon final completion of the work.

1) **Compensation Insurance:** The Contractor shall maintain worker's compensation insurance as required by Wisconsin Statutes for all of the Contractor's employees engaged in work.

2) **Contractor's Public Liability and Property Damage Insurance:** The Contractor shall maintain commercial liability and property damage insurance against any claims which may occur in carrying out the work under this contract. Minimum coverage will be \$500,000 per occurrence or combined single limit for general liability and property damage, including property damage and completed operations. The Contractor shall also maintain comprehensive automobile liability insurance covering owned, non-owned, and hired automobiles. Minimum coverage will be \$500,000 per occurrence or combined single limit for automobile and property damage.

3) **Scope of Insurance and Special Hazards:** The Contractor's public liability and property damage insurance shall provide adequate protection against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by the insured and also against any of the special hazards that may be encountered in the performance of this contract. The Contractor is responsible for determining the special hazards that must be insured for on this project. Special hazards may include: loading and unloading, excavating, filling, drilling, blasting, explosions, demolition, underpinning, elevator, or hoist. Insurer must also document on the insurance certificate that they have been notified, when applicable, of the Contractor's involvement in asbestos abatement and that insurance coverage provided specifically covers that activity.

B. Protection to be provided by the Owner:

1) The Owner, through the State, will maintain builder's risk protection on the work encompassed by the contract. Such protection will be for all risk coverage and will be for an amount equal to at least 90% of the actual cash value of such property. builder's risk protection will be provided on a completed value basis which provides coverage for 100% of the value incorporated in the work as well as materials stored on the site to be incorporated in the work. Form work in place, form lumber on site, and temporary offices for Owner employees when required by the contract documents are also covered against loss.

2) The protection will cover materials, equipment, supplies and temporary structures of all kinds incident to the construction of the work, and (when not otherwise insured) machinery, tools, and equipment belonging to the Owner or similar properties belonging to others for which the Owner is liable, all while forming a part of or contained in said work or temporary structures or while in cars on switches or side tracks on premises described or within 100 feet of any building described in the policy or while in the open on premises described, or when adjacent thereto while on sidewalks, streets, or alleys. Equipment which is the property of the Contractor, subcontractor, or their employees, such as mixers, hoists, scaffolding, miscellaneous and small tools, canvases or tarpaulins or other equipment is NOT covered by this protection.

3) All risk protection includes all risks of direct physical loss and perils such as: a) Vandalism and malicious mischief; criminal damage to property; b) Fire: loss from fire and lightning and resultant damage caused by smoke, water; c) Wind, hail, flood, burglary, sprinkler leakage, explosion, collapse, and all other causes, unless specifically excluded. Exclusions from this coverage are available upon request from the Owner.

4) The State, Owner, Contractor and all subcontractors waive all rights, each against the other, for damages caused by fire or other perils covered by protection provided, except such rights as they may have to the proceeds of protection provided by the State as trustee.

COPY

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings in the State Capitol, Room 416 North, Madison, Wisconsin on July 29, 1999, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Robert Stobb	Department of Administration	\$330.00
2. Dean Rahn	Department of Corrections	\$3,169.50
3. David M. Stasik	Department of Employee Trust Funds	\$?
4. Rodney & Nadine Figueroa	Dept. of Ag. Trade & Consumer Protection	\$2,500.00
5. Randolph & Karen Sedlac	Department of Revenue	\$5,768.35
6. Ronald J. Stanek	Department of Revenue	\$18,064.78
7. Stanley J. Meyer	Department of Transportation	\$12,922.63

In addition, the following claims were considered and decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
8. Rosendale Farm Equipment, Inc.	Department of Administration	\$49,776.35
9. Kevin J. Budden	Dept. of Ag. Trade & Consumer Protection	\$99.72
10. Gunnard Landers	Department of Financial Institutions	\$370.00
11. Bernice Northam	Department of Revenue	\$977.46
12. Cory Prescott	Department of Corrections	\$1,005.00
13. Daniel P. Droessler	Department of Natural Resources	\$2,593.64
14. Dave Habeck	Department of Natural Resources	\$320.00
15. Roseann Rossing & Eric Mallon	Department of Natural Resources	\$1,150.32
16. David M. Rusch	Department of Natural Resources	\$1,511.75
17. Mark Sweet	University of Wisconsin	\$413.14
18. Beth Timm	University of Wisconsin	\$84.80
19. Brian L. Dain	Winnebago County District Attorney	\$1,577.45
20. Alla Y. Likhterev	Department of Health and Family Services	\$1,151.06

The Board Finds:

1. Robert Stobb of Oshkosh, Wisconsin claims \$330.00 for damage to his garage door. In April 1999, the claimant was driving a DOA Fleet vehicle equipped with a 3' x 5' trailer. The claimant states that while he was backing into his driveway, he misjudged the overall length of the vehicle and trailer and backed into his garage door, causing damage to the door. The claimant believes he should be reimbursed for the cost of fixing the garage door, since the damage occurred while he was driving a DOA vehicle. The DOA recommends denial of this claim. It is apparent that the damage to the claimant's garage door was caused by his own "misjudgment." While the claimant may have an insurance claim, the DOA does not believe there is any liability on the part of the state for self inflicted damage to the claimant's property, accidental or otherwise. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

7. Stanley J. Meyer of Verona, Wisconsin claims \$12,922.63 for lost wages allegedly caused by actions of the DOT. In 1993, the claimant filed a prevailing wage claim with the DOT against his former employer, Jeff's Trucking. His wage claim stated that Jeff's Trucking had not paid him the prevailing wage for state work as required by state law. He alleges that he was put off and his claim not dealt with by the DOT for five years. He further alleges that the DOT settled with Jeff's Trucking, without the claimant's input or agreement, for approximately \$1500. The claimant feels that he was not well represented by the DOT and that their inefficiency and failure to pursue his wage claim led to his losses. Section 103.50 (2), Stats., requires a contractor or subcontractor performing work on a state highway construction contract based on bids to pay not less than the prevailing wage rates for employes. Section 103.50 (8), Stats., provides that the DOT shall require adherence to subsection (2), may demand payroll and other records from the contractor, and may request the district attorney to investigate and prosecute violations of the prevailing wage law. The DOT did so in this case and referred the matter to the U.S. Department of Labor (USDOL) because of the alleged actions of Jeff's Trucking. The DOT states that most of the delay in this case occurred while the USDOL was reviewing the matter. Upon completion of their review, the USDOL did not take any action. The DOT then used its resources and entered into mediation with Jeff's Trucking. The DOT also commenced a debarment action, which precluded Jeff's Trucking from entering into state contracts. The Department reviewed information provided by the claimant and appreciated his input. However, the DOT was not authorized to be the claimant's representative, nor did it claim to be in recovering his lost wages. The DOT used its best judgement and entered into a settlement agreement, which resulted in payment of \$1508.04 gross wages to the claimant. The claimant was not bound by this agreement and was not precluded from any further action against Jeff's Trucking for any remaining wages allegedly owed. The Board concludes the claim should be paid in the reduced amount of \$4,000.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation s. 20.395 (3)(cq), Stats.

8. Rosendale Farm Equipment, Inc., of Brandon, Wisconsin claims \$49,776.35 for additional work done on a building project for the DOA Division of Facilities Development. The claimant states that during the course of the project it was discovered that the bedrock was significantly closer to the surface than had been indicated by the Department's Request For Proposal. Because of the shallow bedrock, the claimant's excavating crew encountered moist soils that would not compact to the 95% maximum density required by the contract. The claimant alleges that DFD employe Tom Rhodes rejected the claimant's suggestion of only removing the small area of substandard soil and instead that the entire construction area be excavated down to bedrock. The claimant further alleges that Mr. Rhodes authorized the claimant to fill the excavated area with material specified by the claimant's engineering consultant. The claimant proceeded to fill the area with the recommended material at an additional cost of \$49,776.35 (cost of both the extra fill and extra excavation). The claimant states that although the conditions of the contract specify written change orders, the contract contains no language that would prevent the parties from amending or waiving any term of the contract by their words or actions. The claimant does not believe it should be held responsible for increased construction costs that result from site conditions that differ from those described in the contract documents. DFD recommends denial of this claim. The boring information from the construction area indicated that bedrock existed at greatly varying depths in the vicinity of the construction area (4.8 feet to 7.0 feet). During excavation, the DFD project representative expressed concern about the soils and testing confirmed that the soils were not being compacted to the required density. The

claimant, his excavation subcontractor and the DFD project representative met to discuss available options. The Department alleges that no decisions were made and no authorizations to proceed were given by DFD at or subsequent to this meeting. The DFD states that three days after the meeting, the excavation subcontractor had excavated the site and placed the fill material without DFD's knowledge. The DFD received a written memo from the excavation subcontractor indicating that the claimant's Engineer, Cal Siegel, had directed them to excavate the area and place the fill materials. DFD states that it never authorized any extra work as required by the contract. DFD believes that the claimant and his design engineer made a unilateral decision to proceed without authorization from DFD, therefore, the claim should be denied. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. *(Member Main not participating.)*

9. Kevin J. Budden of Cuba City, Wisconsin claims \$99.72 for lost milk allegedly caused by a state inspector. On October 14, 1998, the claimant states that a state inspector failed to properly re-assemble a clamp on some milking equipment. The claimant states that due to this error, 570 lbs. of milk spilled down the drain. The claimant requests reimbursement for this lost milk. While not admitting liability for damages to any milking equipment owned by the claimant, the DATCP will not contest allowance of the claim for milk which was lost due to alleged incorrect assembly of a pipeline clamp by a Department employe. Based on the dollar amount of the claim and the gross amount per hundredweight (cwt.) paid by the claimant's dairy plant (\$17.4635) it can be assumed that approximately 5.71 cwt. or 570 pounds of milk was lost. The Board concludes the claim should be paid in the amount of \$99.72 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation s. 20.115 (1)(a), Stats.

10. Gunnard Landers of Altoona, Wisconsin claims \$370.00 for reimbursement for personal Frequent Flyer miles used for business related travel. The claimant, an employe of the DFI, attended a seminar in Washington DC during December 1998. The claimant states that he used 25,000 Frequent Flyer miles, which had been earned during personal trips, to purchase his ticket to DC. The claimant claims that he purchased more expensive tickets for these personal flights so that he would earn the frequent flyer miles and that they are worth approximately 2 cents per mile. The claimant states that if employes drive their personal vehicles for business trips instead of flying, DFI policy is to reimburse them for the cheapest Saturday flight, not for actual costs incurred driving. The claimant believes his situation is similar. He points to a 1987 DFI memo that encourages employes to take advantage of discounts to obtain travel at the lowest cost to the Department. Although this memo also states that the Department cannot pay employes for miles obtained for merchandise purchases, the claimant contends that his miles cost him extra money because he had to purchase more expensive tickets to get them. After his trip, the claimant submitted an expense voucher requesting \$370 reimbursement, the cost of the cheapest Saturday flight. This request was denied. The claimant states that by using his personal miles to obtain his ticket, he saved the state up to \$950. The DFI recommends denial of this claim. Section 16.53 (1)(c)(4) of the Wisconsin Statutes states that employe expenses should include only travel expenses actually paid out and requires that no part of such transportation was had upon a free pass or was otherwise free of charge. The Department of Administration's State Controller's Office has stated that because an employe does not incur any out of pocket costs for using personal frequent flyer points to purchase a ticket for state business travel, the employe should not be reimbursed for those points when used for state business travel. The DFI also points to DER's Code of Ethics rule ER-MRS 24.04 (2)(a), which states, "No employe may use or attempt to use his or her public position or state property or use the prestige or influence of a state position to influence or gain

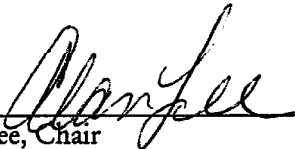
The Board concludes:**1. The claims of the following claimants should be denied:**

Robert Stobb
Ronald J. Stanek
Rosendale Farm Equipment, Inc.
Gunnard Landers
Daniel P. Droessler
Dave Habeck
Roseann Rossing and Eric Mallon
David M. Rusch
Mark Sweet
Beth Timm
Brian L. Dain
Alla Y. Likhterev


2. Payment of the following amounts to the following claimants is justified under s. 16.007, Stats:

Dean Rahn	\$2,929.50
David M. Stasik	\$5,000.00
Rodney and Nadine Figueroa	\$1,250.00
Randolph and Karen Sedlac	\$3,500.00
Stanley J. Meyer	\$4,000.00
Kevin J. Budden	\$99.72
Bernice Northam	\$977.46
Cory Prescott	\$255.00

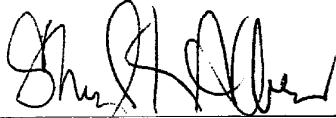
Dated at Madison, Wisconsin this 10 th day of August, 1999.



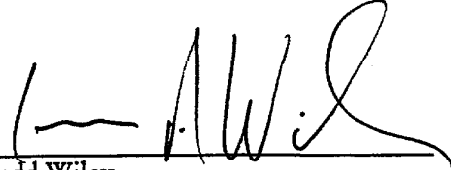
Alan Lee, Chair
Representative of the Attorney General



Edward D. Main, Secretary
Representative of the Secretary of Administration



Sheryl Albers
Assembly Finance Committee

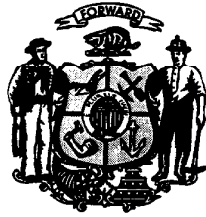


Ladd Wiley
Representative of the Governor

STATE OF WISCONSIN
CLAIMS BOARD

101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR



Mailing Address:
Post Office Box 7864
Madison, WI 53707-7864

Voice: (608) 264-9595
TDD: (608) 267-9629
E-mail: reardp@mail.state.wi.us

COPY RECEIVED
AUG 07 1998

EDGARTON, ST. PETER
PETAK, MASSEY & BULLON

August 5, 1998

Paul W. Rosenfeldt
Edgerton, St. Peter, Petak, Massey & Bullon
P.O. Box 1276
Fond du Lac, WI 54936-1276

RE: Claim of Rosendale Farm Equipment Against the Department of Administration

Dear Mr. Rosenfeldt:

The attached recommendation was received from the Department of Administration in response to your claim. You should note that the attached is only a recommendation of the agency. The final decision regarding payment of your claim will be made by the Claims Board members.

Do you wish to request a hearing before the Claims Board? If a hearing is requested, you or your representative will need to appear before the Board. A representative of the state agency will also appear at the hearing. Both the claimant and the agency will be given an opportunity to briefly summarize their position on the claim. The average hearing takes about 10 minutes. All hearings take place in Madison.


If you do not wish to have a hearing, the Board can make its decision based on the written information that has been submitted by the claimant and the state agency, without appearances by either the claimant or the state agency.

Regardless of whether or not you choose to have hearing, the Board's decision is final; there is no appeal.

If you wish to submit any additional information for the Board's consideration, it is important that do so as soon as possible, so the Claims Board members will have an opportunity to review the materials before the meeting.

The Claims Board only meets four times a year. In order to ensure that your claim is scheduled for the next available meeting, *please let me know whether or not you want a hearing as soon as possible.* Your claim will not be scheduled until you contact me.

Sincerely,


Patricia Reardon
Program Assistant

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN
Department of Administration

Date: August 5, 1998
To: Patricia A. Reardon
From: Lynn R. Lauersdorf *LRD*
Subject: Claim for Additional Compensation on DFD Project 96374

AUG - 5

The attached memo on behalf of the Division of Facilities Development (DFD) is in response to the claim on the referenced project filed against the State under cover letter of July 8, 1998.

DFD does not feel any payment is justified under the terms of the contract.

Lynn R. Lauersdorf and David G. Kaul will attend any hearings scheduled and represent DFD.

CC: Robert N. Brandherm
David G. Kaul

G:/lauersdo/legal/claim.doc

attachment #2). Soils tests confirmed that some of the soils were only being compacted to approximately 77% of the maximum density. None of the tests met the required 95% compaction requirement (see attachment #4). The claimant's design engineer witnessed at least some of these tests. The claimant, his excavation subcontractor, and the DFD Project Representative met at the site to discuss available options. Construction options available varied from: 1) removal of the poor soils and excavation of the rock peaks to create a flat base on which to place the floor, to 2) constructing the facility on the poor soils above the bedrock. Due to a lack of cost information, no decisions were made and no authorizations to proceed were given by the DFD Project Representative at, or subsequent to, this meeting.

Three days after this meeting, the excavation subcontractor had excavated the site and backfilled it with various layers of crushed stone without DFD's knowledge. Upon DFD inquiry as to who directed the removal and replacement of the soils, DFD received signed correspondence from the excavation subcontractor indicating that the Contractor's Engineer (Kal (sic) Siegel) wanted the various layers of crushed stone to replace the existing soils (see attachment #5).

There was no documentation of the claimant preparing cost estimates of construction options, or of DFD issuing an authorization to proceed with any Extra Work, as is required in the Contract Conditions and in the Minutes from the Preconstruction Meeting. To date, no Field Orders or Change Orders have been issued by DFD.

Recommendation Regarding Payment

There is little question that the replacement of the excavated soils with gravel backfill benefited the project as designed by the claimant. However, other more cost effective design and/or construction options may have been available to DFD, had there been cost information generated for the various options upon which to make a decision. The claimant, and his design engineer, made a unilateral decision to proceed with the removal of the poor soils and replacement with gravel backfill to the specifications of the claimant's engineer without authorization from DFD.

Attachments: #1 Site Plan from Request for Proposal
#2 Design Requirements from Request for Proposal
#3 SCS Technical Requirements
#4 Soils Compaction Test Results
#5 Correspondence from excavation subcontractor

ATTACHMENT # 2

1 DIVISION 2 - DESIGN REQUIREMENTS

2 Division Project No. 95421

3

4 INDEX

- 5 1. General
6 2. Design Criteria
7 3. Site Drainage
8 4. Access Roads
9 5. Existing Equipment
10 6. Quality Assurance
11 7. Continuity of Existing Traffic, Parking, and Utilities
12 8. Protection of Existing Work and Facilities
13 9. Shop Drawings
14 10. Off-Site Storage
15 11. Codes
16 12. Certifications and Inspections
17 13. Operating and Maintenance Instructions
18 14. Training of Owner Personnel
19 15. Record Drawings.
20 16. Pavement Removal
21 17. Excavation
22 18. Sheeting, Shoring and Bracing
23 19. Dewatering
24 20. Rock Excavation
25 21. Compaction
26 22. Pipe Insulation
27 23. Reinforced Concrete
28 24. Surface Restoration
29 25. Clean Up

30

31 **1. GENERAL**

32 The manure storage facility is to be built at the Waupun State Prison Farm. The farm is located in Dodge County on
33 State Highway 49, east of the City of Waupun.

34

35 There is a dairy and hog operation on the farm which employs prisoners from the Waupun Correctional Institute.
36 Contractors shall abide by the Farm's security and safety procedures.

37

38 **2. DESIGN CRITERIA**

39 The manure storage facility is being constructed to handle the waste from the dairy operation. The farm operates a dairy
40 herd of approximately 280 head which are housed in a free stall barn adjacent to the milking parlor. The free stall barn
41 uses chopped bedding. The herd is milked three times a day and spends little time on pasture. The farm presently has
42 an existing pit which holds approximately 8,900 cubic feet of waste. This pit will be incorporated into the new facility
43 to be used as a settling/transfer station. The new facility is to be designed to store 200 days of waste, with a minimum
44 volume of 154,530 cubic feet.

45

46 The new manure storage structure shall be constructed using either precast concrete, cast-in-place concrete, or glass
47 lined steel. Alternative materials and designs may be considered based on material quality and life expectancy. The
48 design of the proposed structure shall include provisions for maintaining the operational requirements of the farm
49 operations staff. Also included in the proposed design shall be the relocation and/or reconstruction of the necessary
50 service drives to operate and maintain the manure handling facilities. All service drives shall be designed and
51 constructed to allow for all weather access by heavy farm equipment.

52

53 Access provisions shall be made for sediment removal for all types of storage structure designs for periodic cleaning.
54 Any pumping equipment used to transfer the waste will also be required to handle the straw bedding and this should
55 be taken into account when supplying equipment.

1 Include any rock excavation in the Base Proposal.

2

3 **21. COMPACTION**

4 Thoroughly consolidate and compact all materials of every description encountered in the performance of the work as
5 follows:

6

7 Compact the material to 95% of its maximum density as determined by the Modified Proctor Test (ASTM
8 D-1557). Accomplish Type 2 compaction by mechanical compaction equipment, either hand operated
9 (e.g. vibratory plate, or "jumping jack") or self propelled (e.g. sheepsfoot roller or hoe-mounted plate),
10 depending on the size and nature of the area being compacted. Do not exceed a maximum depth per lift of
11 one (1'-0") foot. Route and distribute the equipment over each lift of the material so that the compaction
12 equipment contacts all areas of the surface of the lift and the materials are thoroughly consolidated and
13 compacted.

14

15 Pipe Bedding - All below grade piping shall be set on a minimum 4-inch compacted sand bedding and
16 backfilled to 12-inches above the top of the pipe with compacted sand.

17

18 **22. PIPE INSULATION**

19 Insulate all below grade piping as follows:

20

21 Place fullsize (4 foot by 8 foot) insulating boards carefully and on level bedding material with the longitudinal axis of
22 the insulation board centered above and in alignment with the pipe centerline. If two or more layers of insulation are
23 required, stagger the transverse joints so as to cover the joints of the layer below.

24

25 Place an additional 6 inches of bedding materials carefully on the insulating board and evenly spread and carefully
26 compact with equipment that will not overly stress the insulating board.

27

28 Once this layer of bedding material is thoroughly compacted, continue the backfilling operation utilizing conventional
29 procedures.

30

31 **23. REINFORCED CONCRETE**

32 All reinforced concrete shall be mixed, formed, placed, and cured in accordance with Section IV, Technical Guide,
33 USDA-SCS, Wisconsin Construction Specification.

34

35 **24. SURFACE RESTORATION**

36 Unless otherwise specified or noted on the drawings, fully and completely restore the surface of all disturbed areas to
37 a like condition of the surface prior to the work. Sawcut all pavements to straight and neat lines and repair with like
38 materials to the full depth of the pavement as existed prior to the work. Topsoil, fertilize, seed, and mulch (or sod) all
39 disturbed landscaped areas with a minimum of four (4) inches of topsoil, fertilizer, seed, and mulch (or sod), or provide
40 for the restoration of other landscaping materials as necessary. Repair gravel roads with a minimum of 8-inches of road
41 gravel.

42

43 **25. CLEAN UP**

44 Level off all waste disposal areas and clean up all areas used for the storage of materials or the temporary deposit of
45 excavated earth. Remove all surplus material, tools and equipment.

46

47 Burning is not permitted.

48

49 Clean all roads.

50

51

52

RIVER VALLEY TESTING CORP

728 S Westland Drive
Appleton, WI 54914
414/733-3827

**ATTACHMENT
4**

REPORT OF DENSITY TEST OF COMPACTED FILL

Project: WAUPUN STATE FARM PRISON
WAUPUN, WISCONSIN

Copies: Mr Vern Liesenberg
State of Wisconsin
1930 Monroe Street
Madison, WI 53711

Client: Mr Dennis Pipping
Rosendale Farm Equipment, Inc.
N588 Center Road
Brandon, WI 53819

Date: June 20, 1997

RYT File No: A97-278

GENERAL:

Date of Tests: 6-17-97
Scope of Work: Conduct field density tests on an "as requested" basis in the general area indicated by Rosendale personnel. Perform laboratory analysis as necessary and notify Dennis Pipping of Rosendale Farm Equipment of failing test results.

Field Technician: B Nuremberg
Test Locations Selected By: River Valley Testing

GENERAL LOCATION: Manure Pit (Depths are referenced to finished grade)

Test Number	Test Location	Elevation or Depth	Proctor Number
1	27'N & 45'E of the Center of the Overhead Door, East Side of Building	-4 1/2'	1
2	45'N & 120'E of the Center of the Overhead Door, East Side of Building	-4 1/2'	1
3	30'S & 25'E of NE Corner of Existing Barn	-5'	1

FIELD DENSITY:

Density Test Method: ASTM D2922-91, **Laboratory Test Method:** ASTM D1557-91, Method "A"

Test Number	Dry Density	Moisture Content	Gravel Content	Max Lab Density	Optimum Moisture	Field Compaction	Specified Compaction	Comments
1	92	28.7		119.3	12.8	77	85	2c
2	100	28.5		119.3	12.8	84	85	2c
3	94	21.8		119.3	12.8	79	85	2c

REMARKS:

- Test results are valid only at the indicated location and elevation. No guarantee is made as to the adequacy of compaction at other locations and elevations.
- Densities are in lbs per ft³
- Water Content is percent of Dry Sample.

- 1. Test results comply with Specifications
- 2. Recompaction required
- 3. Re-compaction required after adjusting fill moisture content
- X. Retest is after recompaction
- 5. Moisture Content meets/does not meet specification
- 6. Maximum lab density adjusted for varying gravel content
- 7. Other: _____

- N - Native Soil
- C - Clay Fill
- S - Sand Fill
- L - Crushed Limestone Fill
- O - Other: _____

Respectfully Submitted,
River Valley Testing Corp.

1999
BILL
gen

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3868/lins
JTK.....

~~WANTED~~ FRI 3/10

JLg

AN ACT ...; relating to: expenditure of \$49,776.35[✓] from the general fund in
payment of a claim made by Rosendale Farm Equipment, Inc.[✓]

→ INSERT ANALYSIS

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Claim against the state. There is directed to be expended from the appropriation under section 20.505 (4) (d)[✓] of the statutes, as affected by the acts of 1999, \$49,776.35 in payment of a claim against the state made by Rosendale Farm Equipment, Inc., Brandon, Wisconsin, as reimbursement for additional excavation costs incurred under its contract with the department of administration dated January 28, 1997¹. Acceptance of this payment releases this state and its officers, State
employees and agents from any further liability resulting from any costs incurred by
the claimant under this contract. Ericson Farm

(END)

INSERT ANALYSIS

This bill directs expenditure of \$49,776.35[✓] from the general fund in payment of a claim against the state made by Rosendale Farm Equipment, Inc. against the department of administration (DOA). The claimant entered into a contract with DOA dated January 28, 1997. The contract called for construction of a manure storage structure at the Waupun State Prison Farm in Dodge County. During construction of the project, soil compaction tests were performed and the soil failed to meet the compaction standards specified in the contract. The claimant asserts that bedrock was encountered significantly closer to the surface than had been indicated in the request for proposal prepared by DOA. Therefore, the claimant did not anticipate that excessive soil moisture would impact the construction. To address the excessive moisture, the pit area was excavated down to bedrock and the area was filled with stone. The claimant asserts that this work was orally authorized by DOA, but no written change order was issued. DOA asserts that this work was ordered by the claimant's engineer without DOA's knowledge. DOA refused to approve payment because it asserts that the claimant had notice of its obligations under the contract and no modification was agreed to. The claimant claimed \$49,776.35, which was the actual cost of the excavation billed by the claimant's excavation contractor. On August 16, 1999, the claims board recommended denial of this claim (see *Senate Journal*, p. 240). ↗ check A

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

**SUBMITTAL
FORM**

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 03/10/2000

To: Senator Roessler

Relating to LRB drafting number: LRB-3868

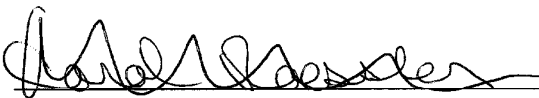
Topic

Rosendale Farm Equipment, Inc. claim

Subject(s)

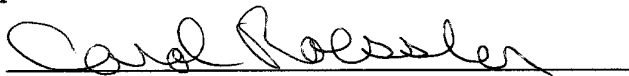
State Finance - claims agnst st

1. JACKET the draft for introduction



in the Senate or the Assembly (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. REDRAFT. See the changes indicated or attached



A revised draft will be submitted for your approval with changes incorporated.

3. Obtain FISCAL ESTIMATE NOW, prior to introduction

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jeffery T. Kuesel, Managing Attorney
Telephone: (608) 266-6778

LAW OFFICES
EDGARTON, ST. PETER, PETAK, MASSEY & BULLON

10 FOREST AVENUE
P.O. BOX 1276

FOND DU LAC, WISCONSIN 54936-1276
FAX NUMBER: (920) 922-9091
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A. D. (DAN) EDGARTON
ROBERT V. EDGARTON
RONALD L. PETAK
JOHN A. ST. PETER
KATHRYN M. BULLON
PAUL W. ROSENFELDT

ALLAN L. EDGARTON (1908-1994)
THOMAS L. MASSEY (1935-1995)
GEORGE M. ST. PETER, RETIRED
NEIL HOBBS, RETIRED

March 15, 2000

VIA FACSIMILE: 608-266-0423

Senator Carol Roessler
119 Martin Luther King, Jr. Blvd.
304 Senate
Madison, WI 53707

Re: Rosendale Farm Equipment, Inc.

Dear Senator Roessler:

Thank you very much for drafting the proposed bill approving the claim of Rosendale Farm Equipment, Inc. I have reviewed the bill and analysis. I would request that immediately before the second-last sentence (which reads, "The claimant claims \$49,776.35. . .") that the following language be inserted:

"However, DOA conceded that some form of remedy was required and that the remedy that the claimant employed benefitted the project."

As authority for this statement, please see the highlighted portion of the enclosed memorandum, which was submitted by the DOA in response to our claim.

Thank you again for your attention to this matter and for your consideration of this letter. Please do not hesitate to contact me should you have any questions.

Respectfully,



Paul W. Rosenfeldt

PWR/jap
Enclosure

cc: Mr. and Mrs. Dennis Pipping

CORRESPONDENCE/MORANDUM

STATE OF WISCONSIN
Department of Administration

Date: August 5, 1998
To: Patricia A. Reardon
From: Lynn R. Lauersdorf *LRD*
Subject: Claim for Additional Compensation on DFD Project 96374

400 - 5

The attached memo on behalf of the Division of Facilities Development (DFD) is in response to the claim on the referenced project filed against the State under cover letter of July 8, 1998.

DFD does not feel any payment is justified under the terms of the contract.

Lynn R. Lauersdorf and David G. Kaul will attend any hearings scheduled and represent DFD.

CC: Robert N. Brandhem
David G. Kaul

G:/lauersdo/legal/claim.doc

Correspondence/Memorandum**STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
Division of Facilities Development**

Date: August 5, 1998

To: Lynn Lauersdorf, DFD

From: David G. Kaul, P.E. *David G. Kaul*
608-267-7993
Assistant Chief
Building Maintenance, Civil & Environmental Engineering Section

cc: Tom Rhodes, DFD Project Representative

RE: Manure Storage Facility
Waupun State Farm
DFD Project 96374
Claim for Additional Compensation

Generalized Summary of Claim

Claimant believes he is entitled to \$49,776.35 of additional compensation for the removal and replacement of poor soils beneath a concrete manure storage structure he constructed at the Waupun State Farm. Claimant asserts that he was authorized to undertake the removal and replacement as a Change in the Work, per Article 6 of the Contract Conditions.

The Division of Facilities Development (DFD) has previously denied this claim and he is now pursuing the unresolved claim, per Article 13 of the Contract Conditions and Chapter 775 of the Wisconsin Statutes.

Generalized Summary of DFD's Position

This project was a design/build project, requiring submittals of proposals in lieu of formal bids, since there was no specified design upon which to bid.

The Request for Proposals (RFP) booklet contained the minimum design standards which the proposed designs must meet. At the direction of the State Building Commission, the RFP did not specify the type of construction required for the storage facility (e.g. metal tank, excavated and lined lagoon, concrete tank, etc.). The RFP booklet contained a Site Plan with 5 soil borings indicating ground surface and bedrock elevation in the vicinity of where the proposed manure storage facility was to be designed and constructed. This boring information indicated bedrock was present at greatly varying depths (from 4.8 to 7.0 feet) within the vicinity of the project (see attachment #1). The RFP also contained Design Requirements to be met by the design/build proposal - including requirements for rock excavation and compaction of any encountered materials to 95% of their maximum density (see attachment #2, pages DR - 4 and 5).

A low cost proposal of \$102,890 was submitted by the claimant, and was based on SCS design standards and an SCS-approved design he had used on a different project in another county and for another party. The proposal was for a reinforced concrete structure, 150' x 86' x 12', excavated 3' to 4' below the surface, with the excavated dirt to be used to berm along the north and east walls (for vehicular access to the facility).

An engineered design was prepared and stamped on 3/22/97 by the claimant's consultant - Calvin Siegel, P.E., of Siegel Engineering, Incorporated, 72 John Street, Fond du Lac, WI 54935, for the claimant to build under the design/build proposal he submitted.

During excavation for the storage facility, the DFD Project Representative expressed concern over the ability of the soils he observed in the excavation to be compacted to the 95% maximum density required in the RFP Design Requirements, and the SCS technical requirements for poor quality soils to be removed and replaced with specified materials (see

Manure Storage Facility
Waupun State Farm
DFD Project 96374
Claim for Additional Compensation, Page 2

attachment #2). Soils tests confirmed that some of the soils were only being compacted to approximately 77% of the maximum density. None of the tests met the required 95% compaction requirement (see attachment #4). The claimant's design engineer witnessed at least some of these tests. The claimant, his excavation subcontractor, and the DFD Project Representative met at the site to discuss available options. Construction options available varied from: 1) removal of the poor soils and excavation of the rock peaks to create a flat base on which to place the floor, to 2) constructing the facility on the poor soils above the bedrock. Due to a lack of cost information, no decisions were made and no authorizations to proceed were given by the DFD Project Representative at, or subsequent to, this meeting.

Three days after this meeting, the excavation subcontractor had excavated the site and backfilled it with various layers of crushed stone without DFD's knowledge. Upon DFD inquiry as to who directed the removal and replacement of the soils, DFD received signed correspondence from the excavation subcontractor indicating that the Contractor's Engineer (Kal (sic) Siegel) wanted the various layers of crushed stone to replace the existing soils (see attachment #5).

There was no documentation of the claimant preparing cost estimates of construction options, or of DFD issuing an authorization to proceed with any Extra Work, as is required in the Contract Conditions and in the Minutes from the Preconstruction Meeting. To date, no Field Orders or Change Orders have been issued by DFD.

Recommendation Regarding Payment

There is little question that the replacement of the excavated soils with gravel backfill benefited the project as designed by the claimant. However, other more cost effective design and/or construction options may have been available to DFD, had there been cost information generated for the various options upon which to make a decision. The claimant, and his design engineer, made a unilateral decision to proceed with the removal of the poor soils and replacement with gravel backfill to the specifications of the claimant's engineer without authorization from DFD.

Attachments: #1 Site Plan from Request for Proposal
#2 Design Requirements from Request for Proposal
#3 SCS Technical Requirements
#4 Soils Compaction Test Results
#5 Correspondence from excavation subcontractor



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3868/2

JTK:jlg:km

Wanted THU 3/16

1999 BILL

Regen

- 1 AN ACT relating to: expenditure of \$49,776.35 from the general fund in payment
- 2 of a claim made by Rosendale Farm Equipment, Inc.

for the remedy

Analysis by the Legislative Reference Bureau

This bill directs expenditure of \$49,776.35 from the general fund in payment of a claim ~~against the state~~ made by Rosendale Farm Equipment, Inc. against the department of administration (DOA). The claimant entered into a contract with DOA dated January 28, 1997. The contract called for construction of a manure storage structure at the Waupun State Prison Farm in Dodge County. During construction of the project, soil compaction tests were performed and the soil failed to meet the compaction standards specified in the contract. The claimant asserts that bedrock was encountered significantly closer to the surface than had been indicated in the request for proposal prepared by DOA. Therefore, the claimant did not anticipate that excessive soil moisture would impact the construction. To address the excessive moisture, the pit area was excavated down to bedrock and the area was filled with stone. The claimant asserts that this work was orally authorized by DOA, but no written change order was issued. DOA asserts that this work was ordered by the claimant's engineer without DOA's knowledge. DOA refused to approve payment because it asserts that the claimant had notice of its obligations under the contract and no modification was agreed to. The claimant claimed \$49,776.35, which was the actual cost of the excavation billed by the claimant's excavation contractor. On August 16, 1999, the claims board recommended denial of this claim (see *Senate Journal*, p. 240).

additional

and fill

At though DOA conceded that some form of remedy was required and the remedy employed by the claimant benefitted the project, \$49,776.35

5

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Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

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Date: 03/16/2000

To: Senator Roessler

Relating to LRB drafting number: LRB-3868

Topic

Rosendale Farm Equipment, Inc. claim

Subject(s)

State Finance - claims agnst st

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