



# INDIANA DEPARTMENT OF TRANSPORTATION

Construction Management  
100N. Senate Avenue, RM N758CM  
Indianapolis, IN 46204

**Eric Holcomb, Governor**  
**Joe McGuinness, Commissioner**

10/12/21

Mike Herz  
Project Manager  
Walsh Construction Company  
1260 E. Summit Street  
Crown Point, IN 46307  
Via e-mail: mherz@walshgroup.com

RE: B-36229, District Review Board Ruling  
Claim for T-Wall

Dear Mr. Herz:

On 6/16/21, a District Review Board hearing was held virtually to discuss your claim for costs associated with re-excavating the backfill and placement of #8 stone at T-Wall #3. Your claim as submitted on 12/2/20 was for a total of \$41,621.04.

As per the claim, it is the position of Walsh Construction that the line and grade directed to be excavated and backfilled with #8 stone was not provided within contract documents nor adequately clarified by the Q&A therefore could not be included in the Working Drawings or bid proposal. INDOT agrees that the #8 stone material requirement was specific direction added after letting; but work was directed due to improper backfill so no payment will be made for labor and equipment. INDOT takes the position that Walsh had a responsibility to clarify the excavation limits in relation to the railroad embankment prior to performing the work.

In the Q&A section of the contract documents there was a question about the backfill material to be used within the over-excavation area of the wall near the CN tracks. The answer was that the backfill material would need to meet the requirements of 206.07, and within the railroad embankment it would need to meet 211, the specification for B-Borrow. The payment for the B-Borrow was not addressed in the Q&A and this is the only mention of a B-Borrow requirement at this location in the contract documents.

Walsh was required by the contract to backfill the over-excavation area in a satisfactory manner, but it is not clear that Walsh would have been expected to bring in the B-Borrow from an outside source without additional payment. In consideration of this, INDOT will pay for the B-Borrow, material only. Per the claim 1,819.44 tons at \$14.75 per ton is \$26,836.74, with the allowed markup of 12% is \$30,057.15. Also, Walsh was required to use geotextile in the backfill. In the claim, Walsh proposed accepting the contract price for geotextile for underdrains. Therefore, the geotextile will also be paid at the contract item rate for geotextile for underdrains. 500 SYS at \$2.12 is \$1,060.00.

B-Borrow	\$30,057.15
Geotextile	<u>\$ 1,060.00</u>
	\$31,117.15

Insurance and Bond	
@.0129= \$401.41 plus 10%	\$ 441.55

Total	<u>\$31,558.70</u>
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Since the requested amount of \$41,621.04 is less than \$150,000.00 the conditions of 105.16(c)2 apply, this is the final decision of INDOT and no further appeal will be considered.

Respectfully,



Joseph J. Novak, P.E.  
State Construction Engineer

CC: Jon Kruger  
Cortney Beale  
Lee Randell  
Tom Harris