

**DISPUTE REVIEW BOARD RECOMMENDATION**  
**HEARING NO. 6, Issue No. 3**

November 27, 2006

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Ref:           FIN # 201213-1-52-01  
                  State No.: 16320-1409  
                  I-4/US 98 Interchange

Subject:       Hearing #6-3 Dated 17 November 2006,  
                  Temporary Pavement Failure, Westbound Detour  
                  Disputes Review Board Recommendation

Gentleman,

Hubbard Construction Co.(HCC) and the Owner, Florida Department of Transportation (FDOT) requested a Dispute Review Board Hearing on the above referenced project. The I-4 / US 98 Project is a complete rebuild of the interchange, including bridges, roadway asphalt and concrete paving, utilities, drainage facilities and noise barrier walls.

**ISSUE OVERVIEW SUMMARY:**

Upon switching traffic to newly constructed sections of temporary pavement in the I-4 median area west of US 98 the pavement failed in numerous large areas. The Contractor believed that the cause was due to higher water table than what was shown in the soil borings. The Contractor submitted a request for additional compensation due to an alleged "unforeseen condition". The Department denied the request, resulting in a request for a DRB Hearing on the issue.

**Contractor Position – Claim # 6-3**

The contractor's position is summarized by excerpts by the contractor as follows:

"1) Hubbard constructed the temporary pavement as it had been constructed in the other parts of the project subjected to the same traffic loads. 2) In other areas of the project where this pavement section had been used only isolated potholes had developed which Hubbard promptly repaired. 3) Exploratory holes revealed the water table at an elevation between 1 and 2 meters higher than shown in the soil borings in this location, at the few locations where it was encountered at all. 4) Hubbard experienced additional cost to reconstruct the temporary pavement with underdrain, full depth asphalt where the pavement had failed, and thicker asphalt at areas that had not actually failed but were showing obvious signs of distress, such as flexing and cracking."

“Hubbard concludes that the temporary pavement failed due to the elevated water table. The problem occurred during October of 2004, after one of the wettest rainy seasons in recent years, including three hurricanes passing through Polk County.”

Hubbard contends that this elevated water table, constitutes a differing site condition and asked for entitlement to compensation for the additional cost as Extra Work in Supplement Specification 4-3.5 and Differing Site Condition under Supplemental Specifications 4-3.7.

### **FDOT Position – Claim # 6-3**

The Department’s position is summarized as follows:

“The Contract Plans and Specifications clearly and explicitly outline the Contractor’s responsibility in planning, construction and maintaining temporary detours. These contract documents also identify the method of payment for the temporary detour, and the items associated with the payment such as the installation of temporary drainage. HCC’s decision not to install the temporary drainage as outlined in the contract documents was their choice.”

While the contractor stated that the water table was within .6 meters (1.97 feet) of the bottom of the temporary base. The Department’s response was, “If this was the case, the Department believes that normal compaction efforts of the vibratory equipment used on the embankment and base, both of which were not tested by the Department, would have exposed any potential issue with the assumed high water table.”

“The Department believes that there are two primary reasons for temporary pavement failure. First is the HCC decision to omit the temporary drainage as depicted in the plans, and second the HCC decision to place only 1-1/2” of structural asphalt on an Interstate mainline and expect it to maintain traffic.

Consequently, based on all of the above, it is the Department’s position that the Dispute Review Board should rule that there is not entitlement for HCC’s request for additional compensation and should uphold the Department’s original denial of the request based on the facts and the language contained within the pertinent contract documents.”

### **Dispute Review Board Recommendation:**

With respect to the Issue, “Temporary Pavement Failure in Westbound Detour”, it is the opinion of the DRB that the Contractor is not entitled to compensation for the additional costs incurred in the failure of the detour as a result of “Differing Site Conditions”

**Rationale:**

The contractor has failed to show that there was a “Differing Site Condition” that caused the failure. The plans and Standard Specifications 102-2.1 state in part that the contractor is to, “Maintain all lanes that are being used for maintenance of traffic”, “under all weather conditions”. Also, in Pay Item Notes, 2102-1, states, “Includes all items required for temporary drainage”. When the contractor reworked the area and placed “temporary” drainage, the work was acceptable.

**Conclusion:**

The Board sincerely appreciates the cooperation of all parties and the information presented for review in order to make this recommendation. The Disputes Review Board’s recommendation should not prevent or preclude the parties from negotiating and equitable solution (should it be appropriate) to any issue pursuant to their partnering agreement.

Please remember that a response to the DRB and the other party of your acceptance or rejection of this recommendation is required within 15 days. Failure to respond constitutes acceptance of this recommendation by that party.

I certify that I have participated in all of the meetings of this DRB regarding this Issue and concur with the findings and recommendations.

Respectfully Submitted  
Disputes Review Board  
Robert P. Bayless, DRB Chairman  
Tom Shafer DRB Member  
Dallas Wolford, DRB Member

Signed for and with the concurrence of all Members:

Sent by e-mail, hard signed copy to follow by mail  
*Robert P Bayless*  
Robert P. Bayless  
DRB Chairman

Cc: Dallas Wolford  
Tom Shafer