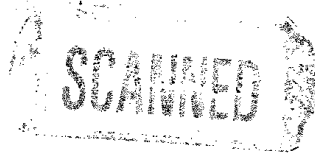


**DISPUTE REVIEW BOARD RECOMMENDATIONS**

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Re: **DRB Hearing Held on January 24, 2013**  
SR 8 (I-10) From East of Halsema Rd. to Lane Ave.  
Fin. Project No. 213272-4-52-01 & 213272-4-56-01  
F.A.P. No: 01051371  
Contract No. T2260  
County – Section 79270  
District 2

Contribute #: 087  
File #: File  
EDMS #: \_\_\_\_\_

Dear Sirs:

The project Dispute Review Board (DRB) was asked to hold a hearing to consider two project dispute issues. Each issue is addressed separately in this recommendation. The DRB's review and recommendation is based upon documents submitted to the DRB by both parties, presentation by the parties and the hearing and the contract documents.

**Issue 1: Entitlement for Compensation for Additional Cost Associated with the Repair and Replacement of Guard Rail Damaged by Third Parties**

**Contractor Position Issue 1**

The following is a summary of the contractor's position. The complete position statement can be found in the submitted position statement and rebuttal. Hubbard Construction Company (HCC) believes that the following language in the specifications addresses this issue and offers entitlement to compensation.

**“7-11.4 Traffic Signs, Signal Equipment, Highway Lighting and Guardrail:** Protect all existing roadside signs, signal equipment, highway lighting and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal equipment, highway lighting or guardrail lie within the limits of construction, or wherever so directed by the Engineer due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the Engineer.

If the Department determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Repair damage caused by vandalism at no expense to the Department.

Payment for repairs will be in accordance with 4 3.4.”

HCC position is that in 7-11.4 “existing installations” clearly are the installations that were on the project prior to beginning the project. “Permanent installations” would refer the newly contractor installed items.

**“5-10.1 Maintenance until Acceptance:** Maintain all Work until the Engineer has given final acceptance in accordance with 5 11.

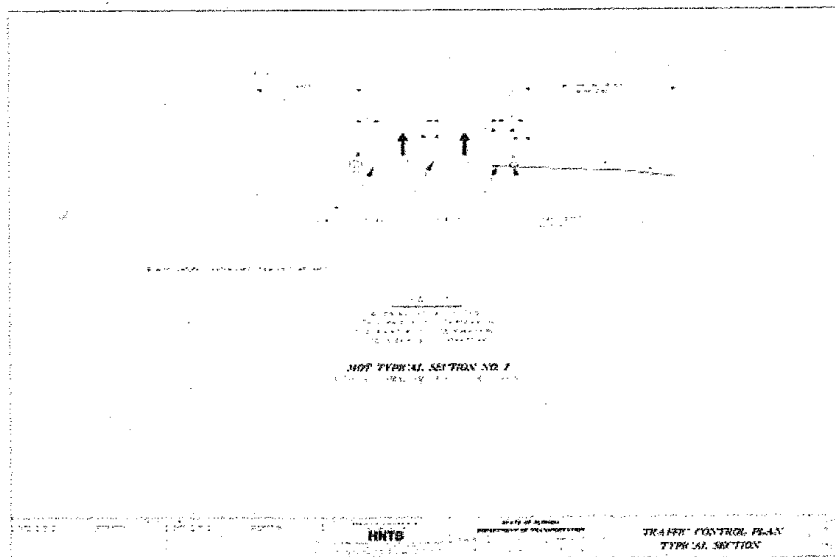
**5-10.2 Inspection for Acceptance:** Upon notification that all Contract Work, or all Contract Work on the portion of the Contract scheduled for acceptance, has been completed, the Engineer will make an inspection for acceptance. The inspection will be made within seven days of the notification. If the Engineer finds that all work has been satisfactorily completed, the Department will consider such inspection as the final inspection. If any or all of the Work is found to be unsatisfactory, the Engineer will detail the remedial work required to achieve acceptance. Immediately perform such remedial work. Subsequent inspections will be made on the remedial work until the Engineer accepts all Work.

Upon satisfactory completion of the Work, the Department will provide written notice of acceptance, either partial or final, to the Contractor. Until final acceptance in accordance with 5 11, replace or repair any damage to the accepted Work. Payment of such work will be as provided in 7 -14.”

Under specification 5-10.1 the contractor is responsible to maintain all work until the engineer has given acceptance. Which HCC is doing and has been doing since the project began.

Under specification 5-10.2 the contractor is responsible to notify the Engineer when all or any portion of contract work is ready for inspection. "The engineer will make an inspection for acceptance. If the Engineer finds that all work has been satisfactorily completed, the Department will consider such inspection as the final inspection." Therefore payment has been made, inspected and traffic has been placed next to it.

Hubbard was directed to install the guardrail early in the project by the plans and then in the traffic phasing provided on Sheet 534 we shifted traffic within a few feet of the guardrail installed and paid as permanent guardrail. The TCP sheet is included as the following figure.



There was a temporary guardrail item for the project that was utilized several times on the ramps. This pay item would have required HCC to maintain the guardrail as part of the unit price.

**"102-13.13 Temporary Guardrail: Price and payment will be full compensation for furnishing all materials required for a complete**

**installation; including end anchorage assemblies and any end connections to other structures and for installing, maintaining and removing guardrail.”**

Summary of Contractor's Position

In conclusion, HCC feels that they should be compensated based on previously provided specs. HCC followed the bid plans and Traffic control plan that showed when to proceed with the permanent guardrail installation. HCC had no acceptable method due to limited space for protection of the permanent guardrail that was damaged by third parties.

HCC is seeking entitlement to payment for third party damages per specification 7-11.4. Hubbard feels that since the Guardrail was installed per spec, inspected, and accepted, then paid for under the Permanent guardrail contract pay item then clearly it is permanent guardrail and should be treated as such using the previously provided spec 7-11.4.

According to another DRB ruling in which Hubbard was the contractor “The Owner is responsible for the Language in the Contract Documents: In cases of conflict, discrepancy, ambiguity, or incorrect/ incomplete information in the contract documents, the Board places the weight of responsibility for clarity, completeness, and consistency on the preparer of the Contract.

It appears there are some contradictions within the spec on when, how and why the contractor gets paid for damages outside of our control. But Hubbard feels that specification 7-11.4 is the intent and fair way to proceed with this Ruling.

**FDOT Position Issue 1**

The following is a summary of the FDOT's position. The complete position statement can be found in the submitted position statement and rebuttal. FDOT believes that the following language in the specifications addresses this issue and denies entitlement to compensation.

The Department's position is that all materials incorporated into this project comply with the requirements of the Contract. In that regard, the contractor is responsible to repair or replace as necessary any and all damaged parts of the construction, and maintain all parts of the project to the above referenced requirements until project Final Acceptance. The Department is not obligated to pay for repair or replacement of any manufactured, or installed items unless such directive is given as a result of a declared state of emergency such as damage from a natural disaster (hurricane, etc.).

### **DRB Findings Issue 1**

The most relevant contract language for this issue is the second paragraph of section 7-11.4.

**“If the Department determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Repair damage caused by vandalism at no expense to the Department.”**

The items that are being addressed are enumerated specifically as traffic signs, signal equipment, highway lighting or guardrail. These items are further divided into two categories: “existing or permanent”. HCC interpretation is that installations that are *permanent* and not *existing*, would be those installed by the contractor. The DRB finds that Hubbard’s interpretation is reasonable. Had the FDOT used the word “and” instead of “or” a different meaning would be represented.

### **DRB Recommendation Issue 1**

The DRB recommends that HCC is entitled for compensation for the additional expense of repairing and replacing guard railing for which insurance recovery was not obtained.

### **DRB Findings Issue 1**

The most relevant contract language for this issue is the second paragraph of section 7-11.4.

**“If the Department determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Repair damage caused by vandalism at no expense to the Department.”**

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### **DRB Recommendation Issue 1**

The DRB recommends that HCC is entitled for compensation for the additional expense of repairing and replacing guard railing for which insurance recovery was not obtained.

## **Issue 2: Entitlement for Compensation for Additional Cost Associated with Repairing Damage to the Asphalt Pavement Friction Course Caused by Third Parties**

### **Contractor Position Issue 2**

The following is a summary of the contractor's position. The complete position statement can be found in the submitted position statement and rebuttal.

A gouge in the friction course in L2 from sta. 851+40-853+00 (approx. 160') was caused by a third party with no witness or police report for insurance reimbursement. HCC was instructed to mill and replace the friction course in this area at no cost to the Department. HCC feels we should be reimbursed for milling and repaving this section based on the following:

1. In the past, HCC has had projects where asphalt was damaged due to third parties where insurance reimbursement could not be obtained, and the Department paid for the repairs in these instances.

2. See attached Spec. 7-11.4 Traffic Sign, Signal Equipment, Highway Lighting, and Guardrail and Bulletin for Crash Cushions. If all of the items in the attachments are reimbursed due to third party damage, what is the difference for third party damage to asphalt?

3. All Friction was finished at the beginning of Oct. with the final contract Day of Nov 30th. But the multiple revisions in the contract by the Department have extended the contract out to an unforeseen date, which is out of our control. HCC paved friction in anticipation of finishing the project within contract time, but when revisions add time and delay the project, HCC should not be responsible for maintain the finished product during this additional time. Hubbard has no control over the revisions issued and feels we cannot be expected to maintain this finished product while waiting an extended amount of time for the Department to send the remaining revisions.

HCC paved the friction course meeting all the specifications for acceptance. Furthermore HCC feels there may be more of this type of issue arising before the contract is complete and some may be much larger. HCC feels we cannot be responsible for incurring these cost to mill and replace these areas when the Department extends the time out in which HCC has no control over.

## DRB Findings Issue 2

The most relevant contract language for this issue is the second paragraph of section 7-11.4.

**"If the Department determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, the Department will, with the exception of any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Repair damage caused by vandalism at no expense to the Department."**

The list of items being addressed here is not open. It is a specific listing of items: *traffic signals, signal equipment, highway lighting or guardrail*. Asphalt pavement is not included.

## DRB Recommendation Issue 2

The DRB recommends that HCC is not entitled for compensation for the additional expense associated with repairing third party damage to asphalt pavement friction course.

The Board appreciates the cooperation of all parties to this action. Please remember that acceptance or rejection of these recommendations is required within 15 days. Failure to respond within the time frame constitutes an acceptance by the non-responsive parties.


I certify that I have participated in all meetings and all discussions concerning the issues and concur with the findings and recommendations.

Charles C. Sylvester, Jr., P.E.  
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P.O. Box 116580  
Gainesville, FL 32611

Signed for, with concurrence with all members

  
Charles C. Sylvester, Jr., P.E. Chairman

02/01/2013