

**DISPUTE REVIEW BOARD RECOMMENDATION**  
**FINANCIAL PROJECT ID. 231918-2-52-01 & 231919-2-52-01**  
**INTERSTATE 95 ( SR-9 )**  
**PALM BEACH COUNTY**

March 25, 2005

Jim Cardaman Project Manager  
Hubbard Construction Company  
268 Indian Road Building 3  
West Palm Beach, FL. 33409

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The Corradino Group  
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West Palm Beach, FL. 33401

RE; I-95 (SR-9) Reconstruction from 10<sup>th</sup> Avenue North to South of SR-80,  
Contract ID: T 4016  
Palm Beach County

**Subject: Dispute over Use and Compensation of F.H.P. Officers for  
Traffic Control During Lane Closures.**

The Dispute Review Board was convened for a hearing requested by the Contractor, Hubbard Construction Company regarding a change in policy by the Florida Department of Transportation relating to the payment for Florida Highway Patrol Officers used during periods of lane closures on the above captioned project. The hearing was held in the offices of The Corradino Group in West Palm Beach, Florida on March 16, 2005 at 2:00 PM.

Packages of information and position statements were presented to the Board by both parties and are made part of this recommendation.

**CONTRACTORS POSITION**

There is one (1) pay item (exhibit A) in the "Contract Schedule of Items" for this project that relates to Traffic Control Officers. It is item number~0 102 14, Traffic Control Officer. This item has an approximate quantity of 4,675 M.H. Sub article 102-11.2 (exhibit B) of the Supplemental Specifications indicates that:

*"Payment will be made only for those traffic control officers specified in the Plans and authorized by the engineer."*

There is a pay item, number 0102 14, that the Department, The Corradino Group, and the D.O.R. intended to be utilized as a vehicle for payment for this activity of work. The Contractor performed the work as required by the contract documents, and is entitled to be compensated for this work activity under this pay item.

There is no indication in the contract documents for this project that the engineer would not authorize traffic control officer compensation under this pay item.

## Events

Widening and reconstruction of 5R9 (1-95) from 1<sup>st</sup> Avenue to South of SR 80 (Southern Boulevard) began on January 5, 2004. Since that time, Hubbard Construction Company has coordinated and used FHP in partial and complete lane/road closures within this project. The Corradino Group has compensated Hubbard Construction Company for these off duty officers under pay item number 0102 14, Traffic Control Officer. This is documented by the February 05, estimate (Exhibit C) for this project. On January 27, 2005 via e-mail (exhibit D), The Corradino Group advised Hubbard Construction Company that:

*“As of January 26, 2005 we are no longer paying for off-duty officers for lane closures.”*

The Corradino Group stopped paying Hubbard Construction Company for Florida Highway Patrol being utilized in lane closures. They went on to give the Contractor a written warning of non compliance for categories one (1) and five (5) of the Contractors Past Performance Report for requesting authorization on the lane closure form, to utilize Florida Highway Patrol for speed control and in lane closures.

## Basis of Entitlement

Supplemental Specifications, section 102-7 (Traffic Control Officer) (Exhibit E) clearly states:

*“Provide uniformed law enforcement officers, including marked law enforcement vehicles, to assist in controlling and directing traffic in the work zone when the following types of work is necessary on project:*

- 1) Traffic control in a signalized intersection when signals are not in use.*
- 2) When Standard Index no. 627 (Exhibit F) is used on Interstate at night time and required by the plans.*
- 3) When pacing/rolling blockade specifications is used”*

Note 36 on drawing sheet 325 (Exhibit G) clearly states:

*“Contractor Shall Provide A Uniformed, Traffic Control Officer During All Operation Resulting In A Temporary Ramp Or Road Closure”*

<sup>4.</sup>

Clearly, there is a discrepancy between these two (2) documents. Sub article 5-2 of the Standard Specifications for Road and Bridge Construction, 2000 edition (exhibit H) clearly states that:

*“In cases of discrepancy, the governing order of the documents is as follows:*

- 1. Special Provisions*
- 2. Technical Special Provisions*

3. *Plans.*
4. *Road Design, Structures, and Traffic Operations Standards.*
5. *Developmental Specifications.*
6. *Supplemental Specifications*
7. *Standard Specifications. Computed dimensions govern over scaled dimensions.*

In light of this, the note on drawing sheet 325 “*Contractor Shall Provide A Uniformed, Traffic Control Officer During All Operation Resulting In A Temporary Ramp Or Road Closure*” clearly prevails.

The Corradino Group’s own “ANTICIPATED ROADWAY LANE CLOSURE” form (Exhibit I) which strongly resembles the Florida Department of Transportation form for closing roadways, in part or in full, clearly states that a roadway closure can be partial or full. In other words, the Department and the CEI consider a roadway closure to be the closing of one or more lanes, not necessarily the entire roadway. Therefore contractually, we are required to provide a “*Uniformed, Traffic Control Officer During All Operation Resulting In A Temporary Ramp Or Road Closure*”. When a single lane is closed for an extended period of time, the contractor is required to place at relative intervals, type III barricades with signs that read “ROAD CLOSED”. Again the closed single lane as defined by the Florida Department of Transportation is a closed road. Closing a single lane clearly requires compliance with this note, which requires the usage of Florida Highway Patrol Officers.

Note 36, on drawing sheet 325 (exhibit G) goes on to describe the method of payment compensation for this effort:

*“COSTS FOR THE OFFICER SHALL BE INCLUDED IN ITEM 1 02-1 4 (TRAFFIC CONTROL OFFICER)”*

Florida Highway Patrol Officers are required for lane closures, and the Department is required to compensate the Contractor for this effort under pay item 102-14 (TRAFFIC CONTROL OFFICER). They are necessary to:

- i) Safeguard the movement of the motoring public through the construction site.
- ii) Protect the construction workers while they are working within the hazardous conditions presented by the construction of 1-95.
- iii) Protect the CEI and FDOT workers while they are inspecting and overseeing the work that is taking place within the hazardous conditions presented by the construction of 1-95.

Although difficult to obtain, The Corradino Group finally allowed Hubbard Construction Company access to the Quantity Computation Book for this Project. This happened on the afternoon of March 3, 2005 (Exhibit J). This was approximately one business day before the deadline of rendering our exhibits and position statements to the DRB. It is noted that in this release, we were not provided a copy as was customary on projects 1 and 5 of the Mobility 2000 Projects. Instead, we were given the option of using our paper at The Corradino Group’s office to

make the copy ourselves, or of Hubbard Construction Company picking up the computation book and preparing a copy for ourselves.

A review of task 102-14 traffic control officer of the computation book (Exhibit K) prepared by the designer of record, F1DR, clearly indicates that they expected this pay item to be a vehicle of payment for FHP utilized during lane closures. This Exhibit shows that 735 hours of a total of 975 hours are to be utilized for lane closures. Further review of this document indicates that Florida Department of Transportation, District IV found it was necessary to increase the allowance of hours for the overall project to 4,675 hours, or 4,160 hours for Florida Highway Patrol in Lane/Roadway closures. This clearly demonstrates the Department's intent and interpretation of this pay item. That is to make payment to the contractor for Florida Highway Patrol in lane/roadway closures. Exhibit K specifically states that:

“TRAFFIC CONTROL OFFICERS ARE PROPOSED TO BE USED FOR THE FOLLOWING ACTIVITIES:

1) during all lane closures”

Additionally, note 36 on page 325 (Exhibit G), of the plans states that:

“CONTRACTOR SHALL PROVIDE A UNIFORMED TRAFFIC CONTROL OFFICER DURING ALL OPERATION RESULTING IN A TEMPORARY RAMP OR ROAD CLOSURE OR AS OTHERWISE DIRECTED BY THE ENGINEER

“It is our position that it is incumbent upon the engineer to authorize the use of Florida Highway Patrol in lane closures, if required. The Department has at a minimum of eighteen (18) years required Florida Highway Patrol to be present as a prerequisite to the contractor setting up lane closures.

As an example, we have included a sworn statement from the Project Administrator, roadway for Greenhorne & O'Mara for State Project 93220-3 503 (exhibit L). In that statement the Project Administrator identified this requirement on a similar 1-95 project that lasted approximately four years. Your own records will reveal that the same Florida Highway Patrol prerequisite has been utilized on Project 1, of the Mobility 2000 Projects that The Corradino Group is in charge of as recently as February 28, 2005. This same requirement has been made on this project over the last 14 months of construction.

## **Summary**

In closing, and summary, Hubbard Construction Company provided a balanced bid, utilizing the specification to determine that Florida Highway Patrol for lane/roadway

Closures would be compensated under the pay item 0102 14. Based on this no money was included in our lump sum M.O.T. items for this work. If the Board were to determine that, despite the numerous justifications contained in the documents and exhibits for this

Project, we were not to be compensated under this pay item for this work activity, we would suffer significant financial damages.

The contract documents are clear. All parties including The Corradino Group have

previously determined that compensation under item 0102 14 is justified. All necessary documentation to support this position is included in this package. The CEI has the right and the obligation to authorize the Contractor to provide Florida Highway Patrol for lane/roadway closures. The contract provides the vehicle for payment for this work, and the work has been performed as required by the Contract documents.

## **DEPARTMENTS POSITION**

### ***Background***

This contract includes a Pay Item No. 102-14 (Traffic Control Officers) with a quantity of 4,675 MH. Of this quantity, 2,770.5 MH have been authorized for payment through January 26<sup>th</sup>, 2005. These man-hours included the use of FHP for lane closures. Payment for these previously authorized man-hours is not in dispute, since we authorized them.

On January 26<sup>th</sup>, 2005, we advised the Contractor that the Department wants the Specifications followed to the letter on this subject and will not authorize any more off-duty FHP officers under Pay Item 102-14 for lane closures, or for any other purpose, other than as specifically required in Supplemental Specifications 102-7, 102-11.2 and Traffic Control Plan Note 36 on Sheet 325 of the plans.

In a letter dated February 2<sup>nd</sup>, 2005, the Contractor argues that lane closures are equivalent to road closures and that Note 36 therefore requires the Contractor to provide a Traffic Control Officer for lane closures, states they will continue to provide them and demands the Department continue payment through Pay Item 102-14.

In our letter dated February 10<sup>th</sup>, 2005, we disagreed with the Contractor's attempt to equate a "lane closure" with a "road closure," we reasserted the Department's position, and we pointed out the notification requirements in Traffic Control Plan Note 35 for the use of on-duty FHP through the Department's Hireback Program, if the Contractor would like to request their assistance for speed enforcement.

TCP Note 36 states: *'Contractor shall provide a uniformed traffic control officer during all operations resulting in a temporary ramp or road closure or as otherwise directed by the Engineer'* (emphasis added). The term "lane closure" does not appear in this note. A lane is not a road; a lane is "a specially marked strip of road that is used to keep vehicles separate" (Cambridge Dictionary definition). The note and related specifications unambiguously define the instances when the Department wants Traffic Control Officers present, at the Department's expense, and then gives discretion to itself—not the Contractor—with the statement "or as otherwise directed by the Engineer."

### ***Review of the Contract***

Supplemental Specification 102-7 Traffic Control Officer (pp. 104-105) states:  
"Provide uniformed law enforcement officer, including law enforcement vehicle, to and directing traffic in the work zone when the following types of work is necessary on projects:

1. Traffic control in a signalized intersection when signals are not in use.
2. When Standard Index No. 627 is used on Interstate at nighttime and required by the plans.
3. When pacing/rolling blockade specification is used."

Supplemental Specification 10241.2 (pg. 109) states (in part):

"Payment will be made only for those traffic control officers specified in the Plans and authorized by the Engineer."

Traffic Control Plans Sheet 325, in Traffic Control Plan Note No. 36 states:  
“Contractor shall provide a uniformed traffic control officer during all operations resulting in a temporary ramp or road closure or as otherwise directed by the Engineer. Costs for the officer shall be included in Item 102-14 (Traffic Control Officer).”

Traffic Control Plans Sheet 325, in Traffic Control Plan Note No. 35 states:  
“The Contractor shall notify FDOT two weeks in advance and again 24 hours in advance of beginning construction activities requiring active law enforcement personnel for speed enforcement in order for FDOT to coordinate with FHP.”

2000 Standard Specifications for Road and Bridge Construction Section 4-3.1 states (in part):  
“**4-3.1 General:** The Engineer reserves the right to make, at any time prior to or during the progress of the work, such increases or decreases in quantities, whether a significant change or not, and such alterations in the details of construction, whether a substantial change or not, including but not limited to alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable by the Engineer. Such increases, decreases or alterations shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the work, as altered, the same as if it had been a part of the original Contract.”

***Department’s Position***

1. The contract documents do not require the Contractor to provide Traffic Control Officers for lane closures.
2. The Department has the right to under-run or decrease the quantity of Pay Item No. 102-14 at its discretion.
3. The Contractor has no right or contractual basis to contract FHP for services at the Department’s expense without the Department’s authorization and agreement.
4. The Department will not pay for off-duty FHP officers contracted by HU without authorization for lane closures, or for any other purpose, other than as specifically required by the contract and authorized by the Engineer.

The Department would like to make one additional point: This dispute is not a referendum on work zone safety. The Department is no less concerned than the Contractor about work zone safety. We may have a difference in opinions regarding the most effective means to reduce speed in our work zones, but that is not the issue before this Board. The issue is whether the

Contractor has some contractual basis that entitles him to be paid for off-duty law enforcement officers whenever he wants them at the Department’s cost. We find no such basis in the contract. The Department is trying to manage its resources in a responsible way on a state-wide basis through various efforts and initiatives for work zone safety that are beyond the scope of this presentation, but which should clearly indicate its commitment to improve safety in our work zones. We are hopeful that the Board will carefully review the contract and uphold the explicit terms of the contract on the issue before the Board.

**CONTRACTORS REBUTTAL**

The following responds to TCG Rebuttal of 3/14/05. For convenience we have included a copy of TCGs letter with our numbered points referenced to the left of each relative paragraph. In summary the rebuttal attempts to deflate the strong position available to HCC through the contract documents. To clarify the facts, however, we present the following:

- 1.HCC has no Comment.

2. The term pricing issue is merely a proprietary term that HCC uses for issues in which the Owner/CEI disagrees that the Contractor has established basis for entitlement.

HCC has no issue with the bid price for pay item 0102-14, It was placed in the contract to be used as a vehicle for the Owner to compensate the contractor for various uses of FHP, including but not limited to lane/roadway closures.

Our position paper and exhibits submitted are as required to support our argument, basis, and establish background for the use of pay item 0102-14. All relevant specifications were considered when preparing our basis. They are presented in sequential fashion.

3. Reference to previous pay under 0102-14 for FHP in closures demonstrates that the CEI concurred with the use of this item as a vehicle of payment for FHP in lane/roadway closures.

4. We agree with this comment.

5. The Contractor does not dispute the Department's right to alter quantities. This issue is not about quantity changes. The concern here is the payment for FHP officers who are required by the Contract for the safety of the motoring public, the CEI, FDOT Representatives, and construction workers. Section 4-3.1 was not designed to allow cost savings at the expense of the motoring public. The computation book provides the intent of the pay item as determined by the DOR and FDOT. The timing of the spec change is irrelevant as note 36 on plan sheet 325 determines the payment vehicle. There are no full roadway closures included in this project. This would be required to support the plan quantity, which is part of the contract documents. Where than did the Department intend to utilize 4,675 MH of FHP?

6. TCG's own argument/reference to Cambridge Dictionary indicates that road is interchangeable with lane, road used as part of definition of lane. FHP required per note and has always been required in lane closures, including on 2/28/05 on TCG's Project #1. There is not discretion when it comes to the safety of the motoring public. You can't disallow or not authorize just to save money. The CEI/Department has the obligation to utilize resources that are available contractually to safeguard all concerned.

7. The projects referenced by HCC with order of precedence (5-2) applied are the same as is project 1 of the mobility 2000 projects. Use on this project include FHP in lane closures. The CEI has required HCC to have officers present for lane closures.

HCC has only started planned lane/road closures without FHP. This is after first verifying that FHP for the lane/roadway closures are in route and will be onsite within the time that the closure is put in place. Documents submitted are in part for the purpose of establishing the way this spec is interpreted and to establish that the FDOT always used FHP in lane/roadway closures.

8. The CEI doesn't have to approve FHP for lane closures; they are required by plan sheet 325 note 36. The fact is that FHP in lane closures has been historically used by the Department because of their success at reducing accidents in lane/roadway closures. The fact that the FDOT is spending millions of dollars for on-duty FHP, safety

campaigns, special signing and media blitzes to assist with speed control does not preclude the contractual requirement of FHP for lane/roadway closures. It is merely enhancing it. No policies or direction are being dictated by the Contractor. We are simply following the instruction of the contract.

9. We agree that the Department has the right to increase or decrease quantities, but not when they go against the grain of the contract, and put the safety of the public in jeopardy.

HCC has no motivation in this matter other than to maintain the standard of safety that the Department has provided for in the past, and to honor the contract. Our bid is balanced, with a small mark-up on this item. Once administration/coordination costs are realized it is nearly a break even situation for us. The Department, if not required to provide compensation for the use of FHP in lane/roadway closures, would realize a significant cost savings at the risk of safety to the motoring public.

10. There has not been any unauthorized use of FHP. In fact, had we failed to utilize them in lane /roadway closures, we would have violated the requirements of the contract documents. The department's approval is given in Sheet 325, note 36 of the contract plans. Again the hirebacks is clearly an enhancement to the required FHP in lane/roadway closures. There is no risk of using FHP in lane/roadway closures, the contract requires them. The risk would be to not use the contractually required FHP in lane/roadway closures. When an accident happened, the liability would be significantly greater than the few hundred dollars cost for the use of the FHP in the closure. This is not to mention the risk of severe injury or death to the motorist and or the CEI,

Contractor or FDOT involved in the accident.

HCC has attempted to request authorization for FHP for speed control. Again this is as an enhancement, to the already required FHP in the closures. The CEI has, overlooked our letters, and denied us the use of the anticipated roadway/lane closure form for this use. This is despite its historical use for providing all requested/required information pertaining to the lane/roadway closure.

How can the average of 1 FHP per shift impact FHPs ability to staff on-duty speed enforcement activities? Are there any facts to support this? We have been asking since this issue came up in January for a schedule of available on-duty officers so that we could do our part in coordinating the hire-back program. To date we have received nothing.

### **DEPARTMENTS REBUTTAL**

The Corradino Group (TCG) respectfully submits this rebuttal to the position paper from Hubbard Construction, Inc. (HCI) regarding the issue over future use of and compensation for Florida Highway Patrol (FHP) officers for lane closures.

We do not believe the issue or issues before the Board have been clearly defined by HCI in their position paper, starting with the "Pricing Issue" title on their submittal. (We have no issue with the bid price for Pay Item 102-14.) HCI's 72-page position paper and exhibits includes many statements and references we do not consider relevant to an issue that is not clearly articulated. We hope to clarify the issue, and the areas of agreement and disagreement, with the following



These facts are not disputed and we do not see them as issues before the Board:

1. Payment for previously approved quantities: Payment for previously authorized use of FHP for lane closures is not now and never has been disputed. Previously approved man-hours for the use of FHP through January 26th, 2005 have been paid, as shown in the copy of the Engineer's Monthly Estimate included in HCI's submittal to the DRB. The quantity paid to date is 2770.5 MH, which amounts to \$96,967.50.
2. Basis for pay item plan quantity: The plan quantity of 4,675 MH for Pay Item 102-14 included an estimate of man-hours for the use of FHP off-duty officers for lane closures, road closures and ramp closures.

We consider item 1 above irrelevant because payment is not disputed. We exercised the discretion afforded to us by the plans and specifications in approving those man-hours and that use of the pay item. We also consider the second item irrelevant because: (a) the comp book is not part of the contract or bid documents, it merely documents the basis for the Engineer's estimates of plan quantities; and (b) the quantity was estimated before the applicable Supplemental Specifications limiting the use of Traffic Control

Officers were added to the contract, technically the man-hours were overestimated; nevertheless, the quantity was an *estimate* for an item long-subject to significant overruns and under runs, due largely to the broad discretion provided to the Engineer for its use. There has never been any guarantee of accuracy expressed or implied for the quantity of a discretionary item on a unit price contract.

These opinions we disagree on, and in addition we do not consider them relevant to any issue of entitlement:

1. Interpretation of TCP Note 36: MCI says lane closures are equivalent to road closures, and that TCP Note 36 therefore requires Traffic Control Officers to be present for lane closures. We maintain a lane closure is not a road closure, and that the note does not require officers to be present. The plan quantity and the Note give discretion to the Department, but nothing in the Note creates an obligation for the Department to approve off-duty officers for lane closures
2. Requirement for FHP officers for lane closures: HCI provides a statement from a Project Administrator from another project (an older project with different specifications), essentially stating HCI was required to have FHP officers on site as a condition precedent to any lane closure. This statement is irrelevant. It has nothing to do with this project or this contract. In this contract, plan notes and supplemental specifications specify and limit the use of Traffic Control Officers to be paid under 102-14. On this project, we have not required HCI to have officers present for lane closures. Furthermore, HCI has previously not considered them essential to their lane closures, since on more than one occasion HCI has closed lanes without FHP officers present. On other occasions, HCI has closed lanes without FHP arriving on time or staying for the full duration of the lane closure. We did not suspend or delay the Contractor's operations on any such occasion, and neither did the Contractor suspend his operations when FHP didn't show, arrived late or left early

These are the relevant issues before the Board as we understand them, and our position as previously indicated:

1. Is the Department *obligated* to approve FHP off-duty officers for lane closures as the Contractor maintains? No, nothing in the contract creates such an obligation. Opinions about the advisability of such are irrelevant. The Department has spent millions of dollars on off-duty officers in the past; that fact does not create an entitlement for any contractor. The Department is now spending millions more for on-duty officers to assist with active speed enforcement, a state-wide work zone safety campaign and media blitz, new work zone signing and speed enforcement initiatives, etc.; the Department has the right and the responsibility to manage public resources the best way it sees fit, without having its policies and direction dictated by one contractor.
2. Can the Department under-run the plan quantity for Pay Item 102-14? Yes, that's why we have unit-price contracts. The Department has the right to increase or decrease quantities pursuant to Article 4-3.1 of the Standard Specifications.
3. Is the Contractor entitled to payment under Pay Item 102-14 for *unauthorized* use of FHP since January 26<sup>th</sup>, 2005 ? No. Since January 26, 2005, Hubbard has contracted with FHP for 50 MH of off-duty officers to assist them with lane closures (this amounts to \$1,750 at the \$35 per MH unit price). HCI contracted for this service without the Department's approval or authorization, after we clearly communicated to HCI that the Department does not want the Contractor to provide off-duty officers for lane closures, preferring instead active speed enforcement by on-duty officers. HCI contracted for these services at their own risk, pending this presentation to the Board. It should also be noted that— although not required—we gave HCI an opportunity to mitigate these costs by allowing and indeed encouraging the use of FHP for speed enforcement through the State's Hireback Program; however, due to limited availability of officers, HCI's use of off-duty FHP for lane closures has interfered with FHP's ability to staff our requests for on-duty speed enforcement activities.
4. Is the Contractor entitled to compensation for future use of FHP for lane closures at its discretion without the Department's approval? No. HCI has no right or Contractual basis to contract FHP for services at the Department's expense without the Department's express authorization and agreement

## **BOARDS FINDINGS**

Since January 5, 2004 Hubbard construction has used FHP in Partial and Complete Lane Road Closures on the Project. Hubbard was compensated for off duty officers used at lane closures under Pay Item 102-14, Traffic Control Officer. As of January 26, 2005 the Engineer advised that the use of a FHP Officer would not be compensated for use on a lane closure in the future. The Engineer said that the specifications and plans only required the use of a Uniformed Traffic Control Officer during the Operation of a Road Closure or Ramp Closure. The Engineer did not consider the closing of a lane to meet the definition of a "Road Closing".

The Contractor has continued to use an Off Duty Officers at all lane closures, but has not been compensated by the Engineer.

The Department does not consider the use of an FHP Officer an enhancement to the safety of the traveling public or to construction personnel on the job site. The Contractor strongly feels that it provides for safety help to the general public and the Contractor and Engineering Personnel on the Project.

The Department has decided that an Officers car, with blue lights blinking, and parked at a lane closure location does not enhance safety, and even though prior to January 26, 2005 they did require and pay for its use on lane closures, they now say that a lane closure does not meet the definition of "Road Closure" on this Project.

The Contractor counters that the word lane is interchangeable with road within the contents of the plans and specifications.

The use of pay item 102-14 Traffic Control Officer is a discretionary item and the use of this item is strictly controlled by the Project Engineer. Prior direction and approval by the Project Engineer is required before this item may be used within the project and the Contractor compensated for the use.

I-95 is one of the heaviest traveled roads in the country and setting up a lane closure is one of the most dangerous activities for the Contractors Personnel on this Project. It is probably much safer to set up a complete road closed condition than a lane closure. It should be noted that the complete closure of 1-95 is not allowed on this Project.

The Designer, the Construction Engineer, and the Contractor have all taken a position that a lane closure required the use of an off duty FHP Officer for the first year on this Project.

It is probably true that a Patrol car with light flashing and just sitting in a Construction Zone only causes a momentary drop in the speed of cars in the lane closed area.

The debate over the definition of Lane closure verses Road closure as defined in the Specifications is not clear and even the dictionary does not provide much help in this case. The writer of the Specification probably knew what he meant and **did not intend** to use an FHP Officer on Lane Closures on a State Wide Basis.

### **BOARDS RECOMENDATION**

The Board believes that the State can interpret the Specifications to mean that a Lane Closure is not the same as a Road Closure and, therefore, no longer pay

for an off duty FHP Officer on lane closures. However, the Board strongly recommends that the Department consider the dangerous activity associated with the setting up of a Lane Closure on this highly traveled section of I-95. An Officer would in all probability, be an added safety enhancement in the setting up and removing a Lane Closure. One accident prevented could potentially save more money than the cost of Officers for the entire Projects time period.

The Dispute Review Board recommends that the Department revise the Contract language to allow payment for the Traffic Control Officers at least during lane closures setup and removal. In addition we recommend that the **Department follow up on the additional steps which it mentioned and proposed to further alert the motoring public of an upcoming lane closure and immediately by implementing the use of and/or increasing the use such items as Radar Signal Generator, Speed Signs, Better Lighting, and the use of multiple hire back Officers for Speed Control.** The Off Duty Officer may be of limited use after the Lane Closure is underway, but he surely will assist in alleviating the dangerous conditions relating to lane closures for everyone.

The Department has talked for sometime about the increased speed control in the Work Zone by various means for increased safety. The Board applauds this effort. Additionally, perhaps it would be more effective to get the new program in place and working prior to the removal of the Traffic Control Officer for lane closure purposes

The Officer can be eliminated after the enhancements listed above and with any additional items the Department comes up with In the interim period we feel that an Officer is an additional necessity for lane closure safety especially at time of Start Up and Removal.

Please be advised the Board is not in the business of designing and/or approving safety enhancements and features on projects. That is not our function nor do we desire to place ourselves in what could become a litigious situation. However, we have all experienced first hand the dangers of everyday driving on the I-95 Corridor and believe that the aforementioned safety improvements can only benefit the project as a whole.

The Board appreciates the cooperation by all parties involved and the information provided to make this recommendation. Please remember that failure to respond to the DRB and the other party concerning your acceptance or rejection of the DRB recommendation within 15 days will be considered acceptance of the recommendation.

I certify that I participated in the Hearings of the DRB regarding the Dispute indicated above and concur with the findings and recommendations.  
Respectfully submitted,

Dispute Review Board

John W. Nutbrown, Chairman

Rammy Cone, Member

Jimmie Lairacey, Member

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DRB Chairman