

DISPUTES REVIEW BOARD RECOMMENDATION

March 6, 2000

Mr. Dan Turzillo
Design Build Manager
Hy-Power Inc.
6707 Narcoossee Road
Orlando, FL 32822
Fax 407-658-1415

Mr. Fernando Gomez, P.E.
Project Resident Engineer
FRH Construction Services, Inc.
3520 US Hwy 98 South
Lakeland, FL 33803
Fax 941-666-8736

Mr. Bruce L. Baker
Project Manager
Hubbard Construction Co.
105 N Falkenburg, Suite D
Tampa, FL 33619
Fax 813-685-6740

Ref: Polk Parkway - Section 4A, State Project No.: 97160-3309; 20130815201, Disputes Review Board Hearing Concerning: Sign & Signal Foundation Redesign, Resubmittal of Overhead Sign #14, Controller Cabinet Upgrade and the Powder Coated Sign Panels.

Dear Sirs:

The Florida Department of Transportation (Department), Hy-Power, Inc. (Hy-Power) and Hubbard Construction Company (Hubbard) requested a hearing concerning the above referenced items. Summaries of the Department's and Hy-Power's positions were forwarded to the Disputes Review Board (Board), and a hearing was held on February 7, 2000, at the Polk Parkway Office in Lakeland, Florida. At the beginning of the hearing the questions to be answered on each of the above issues were addressed as follows:

- Issue #1. Sign and Signal Foundation Redesign, the Department agreed to merit for the direct cost and requested a recommendation on Quantum for the direct costs. The Department had determined that the requested extension of time had no merit and requested a recommendation concerning entitlement for the time requested by Hy-Power.
- Issue #2. Resubmittal of Overhead Sign #14, the Department agreed to merit for the direct cost and requested a recommendation on Quantum for the direct costs. The Department had determined that the requested extension of time had no merit and requested a recommendation concerning entitlement for the time requested by Hy-Power.
- Issue #3. Controller Cabinet Upgrade, the Department had determined that there was no merit to this claim and requested a recommendation as to entitlement for this upgrade.
- Issue #4. Powder Coated Sign Panels, the Department had determined that there was no merit to this claim and requested a recommendation as to entitlement for furnishing of the coated sign panels and subsequent work.

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The hearing then began with presentations by Hy-Power on the four issues which included some background concerning the project and other issues that were not a part of the hearing, but were necessary to a full understanding of the four issues to be presented. The Department reserved their right to rebut any of the information presented on other issues at a subsequent hearing on those issues if there was one.

Issue #1: Sign and Signal Foundation Redesign.

The question before the Board is to determine the amount of direct cost due Hy-Power for the additional drilled shaft length required by the redesign, and to determine if there is entitlement to any additional time and extended supervision and overhead costs caused by this redesign.

History of the Dispute

Hy-Power prepared and submitted shop drawings of the drilled shaft foundations for approval that showed the top of the drilled shaft to be at grade. These drawings were approved on February 2, 1998. On August 27, 1998, the CEI, Frederick R. Harris (FRH) questioned Hy-Power's approved shop drawings due to an apparent discrepancy between the Signal Pole data and the elevation of the drilled shafts at Mast Arm Foundation Location 5, Poles 1 and 2. As a direct result of the discovery of this discrepancy, Post, Buckley, Schuh & Jernigan (PBSJ) informed Hubbard on September 10, 1998 that it was withdrawing its approval of the shop drawings due to the design not accounting for a significant projection of the drilled shaft above ground and for not accounting for this projection in determining the length of drilled shaft required. Because of these errors, approval of the drawings for the drilled shafts was withdrawn and resubmittal of the design and drawings was required. It was further recommended that Hy-Power review the design and drawings for the remaining locations to verify that these same errors had not occurred.

A further review determined that other Mast Arm Pole locations varied from Hy-Power's design because they would be above or below grade with respect to the elevation of the drilled shaft top and the specific bottom of pole elevations given on drawings S-49 and S-53 and the pole data on drawings T-4, T-5 and T-6. These elevation differences and conflicts with existing utilities caused further redesign to be undertaken. As late as early February 1999, it was discovered that the Power Companies High Voltage Lines are only 1.5 feet from the centerline of Pole #1 at Location 5 and 4 feet from the centerline of Pole #1 at Location 3. At the same time, elevation differences at ground level were discovered at four other locations. Due to the many resubmittals and the large number of RFI's being generated, a decision is made on February 9, 1999, to have Beiswinger, Hoch & Associates (BHA), the Designer of Record, complete the redesign of the drilled shafts. A meeting was held in FRH offices on February 10, 1999, to determine exactly what had to be done to complete the design and finish the resubmittal process. On February 23, 1999, Hy-Power reserved their rights to a Time Extension to the Contract period and an equitable adjustment to the contract through a Supplemental Agreement because the submittal and resubmittal process had taken from January 29,

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1998, through February 9, 1999. On March 24, 1999, Hy-Power was given a summary sheet detailing the revised elevations, stationing and offsets to be used on the redesign of the drilled shafts. In a letter of April 14, 1999 from Hy-Power to Hubbard, Hy-Power submitted their request for an equitable adjustment to their subcontract for direct costs of \$134,784.76 and time extension of 257 calendar days associated with the redesign and submittal process. Hubbard added their allowable markup to Hy-Power's request and sent a request the Department for \$150,487.18 and 257 calendar days, reserving Hy-Power's right to claim for extended overhead costs during that time. The Department approved funds for a unilateral payment of \$18,100 for the labor, materials and equipment to extend the drilled shafts. On May 7, 1999, FRH directed Hy-Power to proceed with the work required. Hy-Power immediately started splicing the reinforcing steel cages and began the drilled shafts on May 24, 1999, completing all but Overhead Sign #14 on June 29, 1999. Overhead Sign #14 is covered later in this recommendation.

Negotiations have taken place between Hy-Power, Hubbard and the Department concerning the direct costs for the added length to the drilled shafts. When no satisfactory resolution could be reached between the parties a hearing before the Board was requested. This hearing was put off once to allow the parties another try at negotiating a settlement. When that failed it was brought to the Board.

Subcontractor's Position

Hy-Power's position is that the redesign/resubmittal process took much too long, costing Hy-Power additional direct and overhead costs and impacting their ability to complete the project in the time frame originally anticipated. The additional direct costs are a result of the added length to the drilled shafts which required additional forms, concrete and reinforcing steel plus the labor and equipment to install them. In addition, Hy-Power contends that the Department and the CEI forced them to retie all of the reinforcing steel in the cages with figure eight ties as outlined in the specification for drilled shafts (Section 455). Hy-Power contends that their work is outlined in the Supplemental Specifications sections 620 through 715 and has nothing to do with Article B455-4.1

Department's Position

The Department admits that the original approval of the drilled shaft design/shop drawings was a mistake and also admits that Hy-Power is due payment for the additional length of drilled shaft. In fact, the Department issued a unilateral supplemental agreement to Hubbard for \$18,100 to pay for the labor, equipment and materials to construct the additional length. The Department does not agree with the amount of compensation being sought by Hy-Power for the additional length and does not agree that there is any additional compensable time due for the redesign/resubmittal process.

DISPUTES REVIEW BOARD RECOMMENDATION

Dispute Review Board Findings

In the latest submittal to the Board, Hy-Power has changed their request for direct labor, equipment and materials to extend the drilled shaft foundations to essentially agree with the Departments offer except for the retying of the reinforcing steel for which they are asking \$9,938.30. This is based upon the fact that the Department required that the complete reinforcing steel cage be retied with figure eight ties according to Section 455 of the specifications. The Board finds that the notes on drawings S-46 and S-50 are clear and state:

The foundations for the Sign Structures shall be constructed in accordance with section 455 of the Department's Specifications and Supplemental Specifications except that, no payment for the foundation shall be made under section 455. The cost of providing the foundation shall be included in the pay item for providing the completed Sign Structure.

The FDOT Supplemental Specifications to the 1991 Standard Specifications for Road and Bridge Construction 1994, page 181, B455-4.1 Cage Construction and Placement states in part:

All intersections of drilled shaft reinforcing steel shall be tied with cross ties or "figure 8" ties. Double strand ties or ties with larger wire shall be used when necessary.

The Board finds that the Unilateral Supplemental Agreement for \$18,100 adequately compensates Hy-Power for the labor, equipment and materials required to furnish the additional length for the drilled shafts.

Dispute Review Board Recommendation

The Board recommends that HyPower accept the Unilateral Supplemental Agreement as adequate compensation for the cost of the additional length of drilled shafts. As to the entitlement for additional time and extended supervision and overhead costs, the Board recommends that there is no entitlement for additional time and/or extended supervision and overhead costs.

Issue #2: Resubmittal of Overhead Sign #14

The question before the Board is to determine the direct cost due Hy-Power for the resubmittal/erection of Overhead Sign #14 and to determine if there is entitlement to an extension of time and the associated extended supervisory and overhead costs.

History of the Dispute

The foundations for Overhead Sign #14 (OHS-14) are part of the preceding discussion and will not be included here except to say that the redesign of this structure included the redesign and resubmittal of design/shop drawings for the foundations. On January 11, 1999, Hy-Power submitted Request for Information (RFI) #116 asking how to solve conflicts with existing overhead power lines

DISPUTES REVIEW BOARD RECOMMENDATION

and GTE underground telephone lines. On February 10, 1999, Hy-Power received a response to RFI #116 noting that the telephone company had requested relocation of the end pole on the sign structure which included modifications to curbing, guardrail and other items. These changes were discussed at a meeting on February 11, 1999, which resulted in Hy-Power informing their supplier to hold fabrication of OHS #14. On February 16, 1999, FRH informed the FDOT that the left upright was to be moved, shortening the truss by 32.62 feet, to place the left upright between Access Road #1 and South Bound US 98, and that the Designer of Record (DOR) would provide a plan revision depicting all necessary changes to fit the new location. They also noted that new shop drawings for the Truss and Foundation revisions would be involved with the revised location.

Hy-Power's supplier wanted twenty weeks to supply the revised truss, but another manufacturer was available that could ship the sign within 10-12 weeks after receipt of approved shop drawings. On February 23, 1999, Hy-Power sent a notice of claim to Hubbard for time and money to cover the cost of the redesign. On March 18, 1999, approximately 3 weeks after all the other overhead signs had been released for manufacture, Hubbard forwarded the revised plans to Hy-Power for OHS #14. Hubbard received the summary of the final revisions to OHS #14 on March 24, 1999. The revised drawings were submitted on May 20, 1999, and after return and resubmittal were approved on July 22, 1999. On August 6, 1999, Hy-Power advised that the OHS #14 could be put on an accelerated delivery to complete OHS #14 by December 22, 1999, or be set for the standard 14 week delivery. On August 27, 1999, FRH informed Hubbard that OHS #14 is to proceed on the 14 week delivery schedule. On August 31, 1999, Hy-Power informed the Department that it was proceeding, under protest, with the standard delivery schedule for OHS #14. The truss arrived on site on January 24, 2000, only to discover that two bolt holes were missing and it was returned to the supplier for drilling of the holes. OHS #14 arrived back on site January 29, 2000 and was erected that day along with its sign panels.

Subcontractor's Position

Hy-Power's position is that the redesign/resubmittal process took much too long, cost Hy-Power additional direct and overhead costs and impacted their ability to complete the project in the time frame they originally anticipated. The additional direct costs are those required to mobilize to the project site, erect the sign structure and then demobilize from the site. Hy-Power is also seeking a compensable time extension for the time required to redesign, resubmit shop drawings, fabricate and erect the sign.

Department's Position

The Department admits that Hy-Power is due compensation for the redesign of OHS #14 and the mobilization and demobilization to erect the sign after all the other signs had been completed, but does not agree to a compensable time extension.

DISPUTES REVIEW BOARD RECOMMENDATION

Dispute Review Board Recommendation

Hy-Power has requested the cost of the additional shop drawings required for the redesign of OHS#14 and the additional mobilization and demobilization to erect this sign. However, Hy-Power has given a credit for the shortened length of the overhead truss (\$8,364.82) which is less than that calculated by FRH (\$9,446.58) resulting in a claim for direct costs by Hy-power of \$7,031.37. Hy-Power furnished no proof of the additional cost claimed for the shop drawings and as a result the Board recommends that Hy-Power accept the FDOT offered payment of the contract amount for OHS #14 as full compensation for the additional work required to produce the shop drawings, shorten the truss and mobilize/demobilize and erect OHS #14.

As to the entitlement for additional time and extended supervision and overhead costs the Board finds that, on the basis of the materials submitted during the hearing, there is no entitlement for additional time and/or extended supervision and overhead costs.

Issue #3: Controller Cabinet Upgrade

The question before the Board is whether there is entitlement to additional costs for furnishing an upgraded Controller Cabinet.

History of the Dispute

The contract was awarded to Hubbard, and subsequently, to HyPower. On February 1, 1999, Hy-Power was advised by Traffic Control Systems (TSC) that the traffic controllers as bid were obsolete, and that TCS would have to furnish the Peek Traffic Systems Model 3000 Controller at an increase in cost. Hy-Power immediately requested a Change Order from Hubbard because the traffic controllers that they had priced in their bid were now obsolete, and the new model would be more expensive. Hy-Power went ahead on February 12, 1999 and ordered the new traffic controllers. On February 17, 1999, Hy-Power forwarded their cost proposal to Hubbard in the amount of \$7,481.07. Hubbard added the appropriate markup to Hy-Power's cost and forwarded the proposal to the Department through the FRH. The controllers were received on the project June 10, 1999 and did not cause any delay to Hy-Power or the project.

Contractor's Position

Hy-Power contends that the controllers were obsolete and could not be furnished. Therefore, Hy-Power had to purchase the newer and more expensive controllers and should receive payment for the added cost to purchase these units.

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Department's Position

The Department contends that had Hy-Power purchased the controllers that they bid upon when the contract was first signed, the specified controllers were available and could have been purchased and paid for as stored materials. Had the controllers been purchased in this manner there would have been no added cost.

Dispute Review Board Recommendation

Hy-Power argues that had they purchased the controllers early in the project the warranty would have expired by the time the controllers were installed, Hy-Power would have been in the position of having controllers that were obsolete and not be able to get parts nor perform maintenance on the controllers. Also, Hy-Power would have had to store the controllers for almost two years.

The Board's opinion is that Hy-Power should have immediately ordered their permanent materials upon award of the contract, including items such as the controllers which they had priced and used in their bid. Had Hy-Power done this they would have had the specified controllers. The controllers could have been paid for and handled as stored materials until they were needed on the project. Therefore, the Board recommends that absent any documentation of any owner desired added value and receipt thereof, Hy-Power is not entitled to compensation for the newer model controllers.

Issue #4: Powder Coated Sign Panels

The question before the Board: Is Hy-Power entitled to additional compensation for furnishing the 15 additional powder coated sign panels and the added costs to hang the un-coated panels and then replace those panels when the powder coated panels arrived on the project?

History of the Dispute

Hy-Power ordered the sign panels after reviewing the contract drawings and specifications and determining that only 4 signs were required to be powder coated. Hy-Power's supplier of the signs, Rocal, Inc. (ROC) sent in their shop drawing and spreadsheets for approval on October 12, 1998, with a transmittal cover sheet that contained a note stating: "1. Please request a confirmation of the signs which backs are to be painted. I have hi-lited signs in the summary (overheads) which I feel apply." Again on January 12, 1999, ROC submitted shop drawings and their letter of transmittal contained a request for clarification stating: "2. Please request a confirmation of signs which are to be painted. These are noted with an * on the sign summary page 3". The signage submittal was approved on February 10, 1999, and immediately released for fabrication and delivery. On a June 17, 1999, field inspection of the signs, the Department found that some of the signs were not powder coated on the back and rejected those signs. On June 22, 1999, Hy-Power

DISPUTES REVIEW BOARD RECOMMENDATION

notified Hubbard of their intent to file a claim because the Department would not include the signs on the pay estimate due to the lack of powder coating. The Department then ordered Hy-Power to install the rejected signs as a temporary measure so the Parkway could open. The Department agreed to pay for the installation of the rejected signs, their removal and replacement with the powder coated signs, but could not agree on a price for this work with Hy-Power. When the signs with the required powder coating arrive on site, Hy-Power removed the rejected signs and installed the signs with the powder coating.

Subcontractor's Position

Hy-Power contends they are due the costs for furnishing the un-coated signs, hanging of the un-coated (rejected) signs, removal and replacement of the un-coated signs with the powder coated signs and the associated additional time. They base their position on Section 700A, Highway Signing which states in part:

All sign structures are to be powder coated, black. All components in the entire assembly shall be powdered.

The backs of all signs mounted on powder coated structures shall be powder coated black to match the finish on sign structures.

Payment for work described in this section shall be included in pay item nos. 700-45-xab (see plans for values of a and b), SIGN LIGHTED OVERHEAD CANTILEVER and 700-70 LIGHTED OVERHEAD SIGN (Bridge Mounted). The work shall be considered incidental to hose pay items.

Hy-Power also points out that the Department admits in a July 9, 1999, letter that it had overlooked ROC's notes concerning which signs needed the black powder coating when the Department states: "The Department's shop drawing review process regrettably overlooked this issue when it approved the sign panels for the overhead trusses without the black powder finish on the back."

Department's Position

The Department takes the position that Section 700A of the Special Provisions states that all sign structures are to be coated black and the backs of all signs mounted on powder coated structures shall be powder coated black to match the existing structures. The Department argues that paragraph 5-1.4.4 of the standard specifications which states in part: "The Contractor shall indicate on the working, shop drawings all deviations from the contract drawings and shall itemize all deviations in his letter of transmittal." The Department also takes the position that the Hy-Power's note on the two transmittals requesting clarification of which sign panels were to be powder coated was not on the shop drawings as a deviation, and therefore, there was no deviation requested. The Department's position is that there is no entitlement for the time or cost of furnishing the powder coated signs.

DISPUTES REVIEW BOARD RECOMMENDATION

The Department does agree that Hy-Power is entitled to the cost of erecting the un-coated signs, removal of the un-coated signs and erection of the powder coated signs and issued a unilateral supplemental agreement for this work. The Department believes that the unilateral supplemental agreement issued to the Contractor for the work of installing the un-coated panels, removal of the un-coated panels, the installation of the powder coated panels and the Maintenance of Traffic to perform the work more than compensates Hy-Power for their work. The Department rejects Hy-Power's price for the above work as unreasonable.

Dispute Review Board Recommendation

The Board has reviewed Section 700A of the Special Provisions and finds that it is clear that the intention of that section is only items included in pay items 700-45, Sign Lighted Overhead Cantilever and 700-70, Lighted Overhead Sign (Bridge Mounted) are to be powder coated. The Department's contention that the notes requesting clarification concerning which signs are to be powder coated on Hy-Power's transmittals were deviations is inconsistent with their own specification which clearly points out the items to be powder coated. The supplier also noted on the transmittals, with an asterisk or by noting "(backs painted)" on the transmittal which signs were to be painted. Hy-Power's notes on their transmittals should have alerted the shop drawing reviewers to the fact that all signs were not specified to be powder coated. Therefore, the Board finds entitlement for furnishing of the powder coated signs, installation and removal of the un-coated signs, installation of the coated signs and time to perform these tasks.

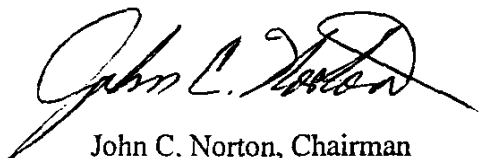
The Board appreciates the cooperation by all parties involved and the information provided to make these recommendations. Please remember that failure to respond to the Board and the other party concerning your acceptance or rejection of the Board's recommendation within 15 days will be considered acceptance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

I certify that I participated in all of the meetings of the Board regarding the disputes indicated above and concur with the findings and recommendations.

Submitted by the Disputes Review Board,

John C. Norton, Chairman, John H. Duke, Member, Keith Richardson, Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:

A handwritten signature in black ink, appearing to read "John C. Norton", written in a cursive style.

John C. Norton, Chairman

cc: Charles B. Wegman, P.E. FDOT



March 14, 2000

Mr. John C. Norton, DRB Chairman
National Construction Associates, Inc.
Post Office Box 280744
Tampa, FL 33685-0744

By Facsimile 886-0213

Re: Polk County Parkway Section 4A
FDOT Project No.: 97160-3309
WPI No.: 1157809
Contract No. 19728
DRB Recommendation for February 7, 2000 Hearing

Dear Mr. Norton,

Attached please find correspondence from Hypower to Hubbard dated March 14, 2000 on the referenced subject. In this correspondence Hypower states their understanding of the DRB's Recommendation for each of the items included in the February 7, 2000 Hearing. Please confirm or clarify Hypower's understanding of the Board's Recommendations as necessary.

If you should have any questions regarding this matter, please call me at (813) 685-6005.

Sincerely,
Hubbard Construction Company

A handwritten signature in black ink, appearing to read 'Bruce L. Baker', is written over the typed name and title.

Bruce L. Baker
Project Manager

cc: Keith Richardson, DRB Fax 646-3022
John Duke, DRB Fax 407-876-4595
Dave Dempsey, HCC
Ernie Wolf, HCC
Dan Turzillo, Hypower Fax 407-658-1415
Charles Wegman, FDOT Fax 941-865-0489
Bill Adams, FDOT Fax 813-909-7725
Fernando Gomez, FRH Fax 941-866-8736

Tampa Division

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Tampa Division



Letter No. 97-309-139 HUB
March 14, 2000
Via Fax & US Mail

Hubbard Construction Co.
105 N. Falkenburg, suite D
Tampa FL 33619

Attention: Bruce L. Baker / Project Manager

Project: Polk County Parkway Section 4
Project No: 97160-3309/6316

Subject: Response to DRB Hearing Recommendations.

Reference: DRB Recommendations Letter/dated March 6, 2000
Hubbard letter/ dated 03/14/00

COPY

Dear Mr. Baker;

HYPower Inc. has reviewed the Dispute Resolution Board recommendations from the hearing of February 7, 2000 and would like to present our summation and position to the Boards recommendation.

Issue No. 1 – Sign and Signal Foundation Redesign.

- Hypower's understanding of this ruling is that the additional compensation for the additional length to the drill shafts is still negotiable for compensation, even in lieu of the unilateral agreement but compensation for the time is not, since the board feels this was part of the redesign/resubmittal process. If this is correct then Hypower concurs with the Boards ruling for this issue.

Issue No. 2 – Resubmittal of Overhead Sign Structure No. 14

- Hypower understands the ruling to indicate that Hypower is due compensation for the redesign of the OSH 14 but it was pending proof for the additional cost. This was supplied to Hubbard to be forwarded to the DRB prior to your ruling. Hypower feels the Department should take this into consideration since the offered payment amount of the structure should include this cost. In reference to no entitlement for additional time and extended supervision and overhead costs for this item, Hypower will concur depending upon our summation of Issue No. 4, if not then we do not concur with this ruling.

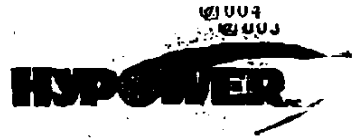
Issue No. 3 – Controller Cabinet Upgrade

- Hypower still feels that they were acting in the best interest of the Department with reference to the Controller Cabinet Upgrade, but will concur with the Boards ruling on this issue

5913 Northwest 31st Avenue, Fort Lauderdale, Florida 33309 • Phone: (954) 978-9300 • Fax: (954) 978-8666
<http://www.hypowerinc.com>

with the Boards ruling on this issue

5913 Northwest 31st Avenue, Fort Lauderdale, Florida 33309 • Phone: (954) 978-9300 • Fax: (954) 978-8666



Issue No. 4 – Powder Coated Sign Panels

- Hypower's understanding of the ruling is that entitlement for furnishing of the new powder coated signs, installation and removal of the un-coated signs, installation of the new coated signs and the time associated with these tasks is compensatory. The original un-coated signs will be compensated through the pay items for the structures.

The time compensation will include the days from June 17, 1999, of which field inspectors rejected the sign panels, to the final installation of the panels on January 29, 2000. This entitlement will also include any extended overhead costs associated with this delay. If this understanding of the ruling is correct then we feel the Board made a fair assessment and Hypower shall concur with this ruling. If this interpretation is incorrect then Hypower must object to the ruling as presented by the Board and request that the Department provides for such compensation.

If the Board agrees with our summation of the issues then we would like to start negotiations for settlement of the cost and time entitlements immediately with the Department. Hypower would also like to establish a meeting to resolve those issues with the Department that were not part of the rulings of the Board at this hearing, but were included with our position statement. We hope that the Department will be willing to open dialogue relevant to these remaining issues with a hope for resolution without the need of another DRB hearing.

Hypower would like to thank the Board members for their time and diligence in reviewing the issues presented at the hearing of February 7, 2000. We hope that we may now move forward to resolve those issues to a fair and equitable compensation that is agreeable to the Department and Hypower.

Hypower requests that Hubbard forward this letter to the Board and the Department immediately so that negotiations may proceed. If you have any further concerns, please contact me at (954)-978-9300, Ext. 237.

HYPOWER Inc.

**Dan Turzillo
Design / Build Division Manager**

**C.C. : Jacques Paul-hus, HPI
Bernard Paul-Hus, HPI**

**HUBBARD CONSTRUCTION COMPANY
TAMPA DIVISION OFFICE**

OUTGOING FAX TRANSMITTAL

FAX NUMBER: (813) 685-6740
OFFICE PHONE #: (813) 685-6005

DATE: 3/14/00
ATTENTION: JOHN DUKE
COMPANY: DRB
FAX #: 407-876-4595

THIS TRANSMITTAL IS BEING SENT BY: BRUCE BAKER

NUMBER OF PAGES INCLUDING THIS COVER PAGE: 3

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (813) 685-6005

MESSAGE:

Thank You,

FRH Construction Services, Inc.
3520A U.S. Highway 98, South
Lakeland, FL 33803
941-666-6005
Fax: 941-666-8736



March 15, 2000

Mr. John C. Norton
National Construction Associates, Inc.
P.O. Box 260744
Tampa, Florida 33685-0744

Re: Polk Parkway - Section 4
State Project No.: 97160-3309; 20130815201
Hypower's Response to the DRB Hearing Recommendations

Dear Mr. Norton:

The following is in response to Hubbard Construction Company's subcontractor Hypower, Inc. letter of understanding, summation and position of the Dispute Review Board's, March 6, 2000, recommendations.

The Department would like to respond to the Board by stating that it embraces its recommendations regarding the four issues presented before its members on February 7, 2000, since the findings and recommendations provided are clear and unambiguous. It is the Department's position that the Board should decline Hypower's invitation to further clarify its findings and recommendations. The Board's findings and recommendations have been unilaterally misconstrued and misrepresented by Hypower.

The Department is in agreement with the Board's recommendations as presented:

Issue No. 1: Sign and Signal Foundation Redesign. "The Board recommends that Hypower accept the Unilateral Supplemental Agreement as adequate compensation for the cost of the additional length of drilled shafts. As to the entitlement for additional time and extended supervision and overhead costs, the Board recommends that there is no entitlement for additional time and/or extended supervision and overhead costs."

Issue No. 2: Resubmittal of Overhead Sign #14. "... the Board recommends that Hypower accept the FDOT offered payment of the contract amount for OHS #14 as full compensation for the additional work required to produce the shop drawings, shorten the truss and mobilize/demobilize and erect OHS #14.

As to the entitlement for additional time and extended supervision and overhead costs the Board finds that, on the basis of the materials submitted during the hearing, there is no entitlement for additional time and/or extended supervision and overhead costs."

Issue No. 3: Controller Cabinet Upgrade. "Therefore, the Board recommends that absent any documentation of any owner desired added value and receipt thereof, Hypower is not entitled to compensation for the newer model controllers."

Issue No. 4: Black Powder Coated Sign Panels. "Therefore, the Board finds entitlement for furnishing of the powder coated signs, installation and removal of the un-coated signs, installation of the coated signs and time to perform these tasks."

70 years of engineering service worldwide

March 15, 2000

Mr. John C. Norton

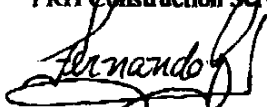
Re: Polk Parkway - Section 4
State Project No.: 97160-3309; 20130815201
Hypower's Response to the DRB Hearing Recommendations

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As for the additional contract time related to issue no. 4 as well as all other outstanding time related issues, the Department has agreed with Hubbard Construction Company to grant a time extension through this project's final acceptance date, therefore, excluding the assessment of liquidated damages to this contract.

In closing, the Department believes that the Board's findings and recommendations on the four issues that the Board was asked to rule on are clearly and concisely conveyed and do not require further clarifications that could again lead Hypower to misinterpret.

Sincerely,
FRH Construction Services, Inc.



Fernando Gomez, P.E.
Project Resident Engineer

cc: John Duke, DRB - Fax (407) 876-4595
Keith Richardson, P.E., DRB - Fax (863) 646-3022
Bruce Baker, HCC - Fax (813) 685-6740
Charles Wegman, P.E., FDOT Fax (954) 583-6570

Frederic R. Harris, Inc.
3520A U.S. Highway 98 South
Lakeland, FL 33809
(941) 666-6005
(941) 666-8736 Fax



Job Number: 97160-3309

Date: 03/15/00

Number of Pages: 3 (Including Cover Sheet)

To: John Duke

Office: DRB - Polk Parkway Section 4A

Fax Number: (407) 876-4595

From: Fernando Gomez

Comments: Response to Hypower's Letter

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Mr. Dan Turzillo
Hy-Power, Inc.
6707 Narcoossee Rd.
Orlando, Florida 32822

Mr. Bruce L. Baker
Hubbard Construction Co.
105 N. Falkenburg, Suite D
Tampa, Florida 33619

Frenando Gomez, P.E.
FRH Construction Services, Inc.
3520A US Highway 98, South
Lakeland, Florida 33803

March 20, 2000

Ref: Disputes Review Board Recommendation of February 7, 2000
Polk Parkway - Section 4A, State Project No.: 97160-3309; 20130815201

Dear Mr. Baker:

Hy-Power has requested clarification of the recommendation issued on February 7, 2000. In reference to the letter from Hy-Power outlining their understanding of the aforementioned recommendation please let me clarify:

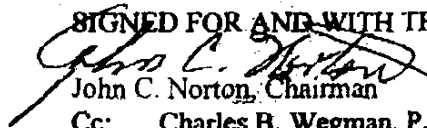
- Issue 1. The Board recommended that Hy-Power accept the Supplemental Agreement as adequate (complete, final) compensation for the additional length of drilled shafts. No negotiation is suggested nor intended, the Unilateral payment was sufficient to cover the costs of the additional length. The recommendation did not include any time or extended supervision or overhead costs for the sign and signal redesign.
- Issue 2. The Board recommended payment of the contract amount for OHS #14, no more, no less. The recommendation did not include any entitlement for additional time or any extended supervisory or overhead costs.
- Issue 3. The Board recommended no compensation, nor any time.
- Issue 4. The Board recommended entitlement for furnishing the new powder coated signs, installation and removal of the un-coated signs, installation of the new coated signs and time associated with this work is compensable. Extended supervisory costs for the time actually working on the site only to accomplish this work would be compensable, but no extended overhead and not the complete period from June 17, 1999, to January 29, 2000.

We hope that the above clarifications will allow the parties to settle the above issues.

Submitted by the Disputes Review Board,

John C. Norton, Chairman, John Duke, Member and Keith Richardson Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:


John C. Norton, Chairman

Cc: Charles B. Wegman, P.E. FDOT