

## DISPUTE REVIEW BOARD RECOMMENDATION

December 07, 1999

Mr. Karl Trewick, P.E.  
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Polk Parkway Section 7  
State Project No. 97160-3312  
WPI No. 1157812  
Contract No. 20002  
Turnpike District  
Issue # 3

Dear Sirs:

The Florida Department of Transportation (Department) and Hubbard Construction Company (Hubbard) requested a hearing concerning the 7 Day Compensable Time Extension at Pond 7. Summaries of the Department's and Hubbard's positions were forwarded to the Disputes Review Board (Board), and a hearing was held on November 24, 1999.

### **ISSUE: 7 Day Compensable Time Extension at Pond 7**

**Is Hubbard due a compensable time extension due to additional work added to the project?** Hubbard Construction and the Department are unable to obtain a settlement regarding a compensable time extension of seven days for the additional work at Pond 7. They have negotiated the direct cost associated with the work, and a unilateral Supplemental Agreement is in process.

### **Contractor's Position**

In the August 15<sup>th</sup> monthly CPM update, Hubbard Construction **added an activity** to the CPM to reflect the additional clay core work at Pond 7. **This work was added in plan revision six (6), issued April 1999, and the scope of work has since changed two additional times. When added to the CPM, this additional work increased Hubbard's negative float for the project from -54 days to -61 days, clearly reflecting and justifying the seven day compensable time extension they requested.**

The dispute is the compensable time extension and the critical nature of the work. The Department contends HCC's logic tie for this added work is invalid and it should be linked to the completed scope of work of excavating Pond 7 of January, 1999. However, this was inadvertently shown complete and should not have been shown complete until late October, 1999.

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It's apparent the Department assumes unlimited resources. With this logic tie, the negative float does not change, and the added scope of work does not affect the completion date of the project. It remains HCC's position that both equipment and manpower must be analyzed when preparing a CPM, and their logic tie justifies the seven day compensable time extension.

**This added scope of work is a disruption to the project's resources, both equipment and personnel.** With this, one can understand crews must follow the critical path of the project. Unlimited resources just do not exist, thus the logic tie as outlined in document nine and eleven (exhibits in Hubbard's submittal to the Board).

There are numerous logic ties that can be made to a CPM when scheduling or adding work to a project. Unlimited resources do not exist, especially in a time when unemployment rates are at an all time low, and resources must be studied when scheduling additional work.

### Department's Position

Hubbard is requesting a seven day compensable time extension for the added work which was requested by Polk County Utilities to satisfy the Department of Environmental Protection for the construction of a clay core surrounding Pond 7. Hubbard's argument for this claim is that they do not have unlimited resources and, therefore, the Department has to accept the extra time as they have scheduled the work.

Pond 7 is an effluent disposal pond being built for Polk County Utilities. It replaces another pond which was partially removed to become a part of the Ramp "D" alignment. This pond is located east of the Department's L/A Right of Way and is accessible from Mount Olive Rd. The installation of a clay core was part of the original contract documents. An on-site visit by DEP engineers revealed that the required work was not sufficient to meet the Department's regulations and, therefore, an extension of the clay core to surround the pond was necessary.

It is the Engineers's contention that **this area is readily accessible and can be constructed at any time the contractor has the available resources prior to final acceptance of the project.** The scheduling tactics are unrealistic, trying to utilize as much smoke and mirrors so that no one can visibly see the truth. As everyone who has been involved in this project is aware, **Hubbard has not followed their CPM schedule, with the exceptions, "begin construction and clearing and grubbing."** Hubbard is now asking the Department to believe that this added work has extended this project by seven contract days.

Hubbard's baseline schedule, copy attached page No. Z14 (exhibit in the Engineer's submittal to the Board), shows the original Pond 7 work, beginning with Excavating Pond 7 on October 26, 1998 and a late start of October 29, 1998. The actual start date was January 8, 1999. The schedule shows 3 days of float, therefore based on their schedule, the project is already 67 days behind. Their schedule again shows that Final Dress Pond 7 does not start until 2<sup>nd</sup> November, 1998 but has 137 days of float, making a completion of May 14, 1999. Since the baseline schedule submittal, an additional 92 days had been granted. This would therefore indicate that the completion of Pond 7 could be extended an additional 92 days, with a possible completion date of August 14, 1999. A review of the schedule logic shows that this work was not previously tied to any other item,

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but final completion. Therefore, extensions to this work would not delay the project completion, provided the work was completed anytime prior to the expiration of time per the amended schedule.

As of **January 25, 1999**, Hubbard was notified of the plan change, with a plan revision given in **April, 1999**. No work was done, and no claim for additional cost was submitted. Clarification on payment was discussed through the use of RFIs. Several months went by, and documented in the weekly project meeting minutes beginning with Meeting No. 50, July 7, 1999, **Hubbard consistently stated that the work would begin in approximately three weeks**. It was not until **August 10**, did HNTB receive notice that **Hubbard was requesting 21 compensable days** for \$44,499.00 and \$98,018.08, the cost of performing the added work. Under the current contract pay items this work should not have cost more that \$15,000.00.

Standard Specification states under **section 4-3.2.1 Significant Change in the Character of Work**: *The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in the quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.* Paragraph 3 continued stating: *If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract. The term "significant change" shall be construed to apply only to the following circumstances. A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125% or decreased below 75% of the original contract quantity.*

Both these cases do not apply to the changes made, and therefore the contract method of payment should have applied. **In the interest of Partnering, the Department negotiated a price for the extra work required totaling some \$32,558.28 which was to cover any and all work and time required to complete the redesigned clay core.** It has become quite clear that Hubbard has intentionally delayed this work in order to make this additional claim.

Hubbard submitted their September, 1999 CPM update with an added activity called Install Additional Clay Core, with its predecessor Final Dress Sta. 1389 to Sta. 1424. This area of work has been on the critical path since January, 1999. **It is understood that adding work to the end of the critical path will extend the project duration.** This was Hubbard's choice. In actuality, **this work still remained as filler work and should have no affect on the project.** This work is now complete, and it can be verified that it has not effected the project completion. This work began on October 22, 1999 with the clay liner being completed on November 1, 1999 and Final dressing completed November 8, 1999. This, again, is different than is currently shown on their recent CPM submittal, page No. Z15. Their most recent schedule shows that the work is scheduled to begin with an early start date of November 8, 1999 and a Final Dress completion of November 18, 1999. Based on this evidence the work began 17 days ahead of schedule and was completed 10 days ahead of schedule justifying **NO TIME EXTENSIONS.**

As previously stated in the Engineer's letter to Hubbard, dated September 23, 1999, **this work is a filler activity and has no influence on the contract duration at this time.** Hubbard can

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show no evidence of any other activity which has been delayed as a result of the extra work performed on Pond 7.

### Disputes Review Board Findings

This additional work was requested by the Department of the Contractor with sufficient lead time to allow him to integrate the scheduling of such into the contract time allowed so as not to impact the completion date of the project.

The early addition of this extra work should not have impacted the timely completion of the project.

The resources associated with this extra work, at the time it was added, were not the same crews required for timely completion of the project.

### Disputes Review Board Recommendation

The Board finds no entitlement to the Contractor's position and recommends that the compensation for seven (7) days be denied.

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 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 Dispute indicated above and concur with the findings and recommendations.

Respectfully Submitted,

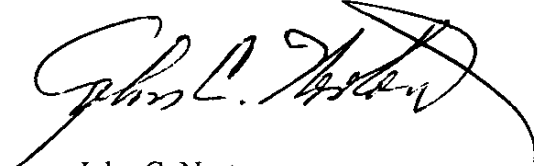
Disputes Review Board

John C. Norton, Board Chairman

John H. Duke, Board Member

Keith Richardson, Board Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



John C. Norton  
Board Chairman

CC: Charles B. Wegman, P.E., FDOT  
David Dempsey, Hubbard Construction Company