

# DISPUTE REVIEW BOARD RECOMMENDATION

October 12, 2005

via: E-mail

Mr. Gregory M. Figler  
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Mr. Murry Yates, P.E.  
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**RE: Dispute Review Board Hearing (15 Issues)**  
**F.P.ID 242496-1-52-01, FAP 0042-1871**  
**Contract 21268**  
**Florida Turnpike & Interstate 4 Interchange Improvements**  
**Orange County, Florida**

Dear Sirs:

The Contractor, Hubbard Construction Company (HCC), requested a hearing to determine **entitlement** for time and/or money for 15 issues outstanding on the subject project since Final Acceptance October 9, 2003. The owner, Florida Department of Transportation / Turnpike Enterprises (FDOT), had attempted to negotiate these items, without success, agreed to the hearing. The FDOT agent for this project was H.W. Lochner, Inc. Should entitlement be established, the Dispute Review Board, (DRB), was to decide quantum for some of the issues and additional time for others.

Pertinent issues, correspondence and other information relating to the FDOT and HCC position were forwarded to the DRB for review and discussion at the hearings held September 21 & 22, 2005 (Rescheduled from June 10 & 11, 2005) at the Turnpike Headquarters Building, Turkey Lake Service Plaza, Florida Turnpike MP 263, Ocoee.

## **CONTRACTOR'S POSITION:**

### **Concise Issue Statement:**

*Hubbard requests a DRB hearing to resolve numerous issues on the above referenced project. We are requesting resolution to three (3) issues that involve direct cost only, plus two (2) issues that include both direct cost and liquidated savings associated with additional time, plus ten (10) additional issues that involve liquidated savings associated with additional time. All these issues are summarized below:*

### **Direct Cost Only:**

1. **Barrier Wall (Temporary) Relocate**, \$17,069.30- HCC daily records document additional quantity for which additional payment is due.
2. **Asphalt Pavement, Miscellaneous**, \$8,339.00- Some of the miscellaneous asphalt was installed by Hubbard forces. For areas that weight tickets were not provided, no payment was received. Field measurements verify the requested additional quantities. **(THIS ISSUE WAS WITHDRAWN PRIOR TO THE HEARING BY HCC)**.
3. **Prestressed Beams**, \$95,467.35- There are two issues: 1. Cracking occurred at the ends of the prestressed beams which was deemed a design flaw. Durastress was requested by FDOT to repair these cracks; therefore, they are requesting payment for the repair; 2. Durastress cast the beams per the specifications and

rust stains formed on the bottom of the beams. FDOT requested that the beams be cleaned. Durastress requested payment for additional work.

**Direct Cost and Time:**

4. **Sodding**, \$6,484.80 and 18 days- During the period for which Hubbard's punch list work was controlling to the schedule Hubbard was requested to place additional sod for the following two factors: 1. Sod that was originally installed as erosion control but was paid for as permanent sod was damaged throughout the course of the project; 2. Additional sod was a direct result of the extra work added during the critical punch list period. Hubbard has documentation for this additional sod placed by Hubbard forces. The extra work performed by Hubbard's punch list crew and the corresponding interruptions to those crews warrant a corresponding contract time extension.
5. **Repair to Bridge Joints**, \$1,332.60 and 9 days- Hubbard was informed on October 1, 2003 of necessary repairs to bridge joints that had been subjected to the traveling public and other contractors for 60 days following the owners punchlist acceptance of all bridge joints on August 1, 2003. Hubbard performed no operations after July 29, 2003 that could have possibly damaged the joints and the owner cannot prove that the work was not completed in strict accordance with the plans and specifications. Hubbard completed the work on October 9, 2003 and is entitled to 9 additional calendar days.

**Time Issues Only:**

6. **Light Pole Pilaster**, 48 days- RFI #007 was sent by Hubbard on October 23, 2001 with the reply received on January 28, 2002. An answer to the RFI was necessary to start the critical scheduled activity 02000, "Temporary Bridge Barrier Wall", which was scheduled to start on November 28, 2001, a full 36 days after the RFI was submitted. The effect of this impact was a 62 day delay, from November 28, 2001 to January 29, 2002 (62 days is adjusted by 9 days granted by unilateral supplemental agreement, plus 4 days for previously granted days with a concurrent issue, plus 1 day for a holiday)
7. **Working Room on SB Bridge**, 1 day – The alignment of temporary barrier walls in Phase 1A and Pre-Phase 1A did not allow the bridge barrier walls to be placed per plan sheet B-21. The engineer acknowledged this as a plan error and issued work order #999-25-03 to correct the situation. The error was first discovered on January 15, 2002 and rectified by January 30, 2002 in order to start activity 02000, "Temporary Bridge Barrier Wall". This 15 days of impact can be adjusted by 4 days previously adjusted for this issue plus 9 days granted with a concurrent issue, plus 1 day for a holiday.
8. **Ramp "G" Bridge Clearance**, 7 days – On February 19, 2002 while Hubbard's surveyor was laying out the location of the temporary concrete barrier wall on Ramp "G" headed south towards the ramp "G" bridge, it was discovered that the required clearance between the columns of this bridge was not available. The total duration of waiting time for a resolution to the issue, plus the actual physical work to correct the situation, plus added temporary asphalt pavement was finally all completed on March 27, 2002. The time period of delay was therefore 36 calendar days of which only 18 days actually impacted the CPM construction schedule. These 18 days can be adjusted by 8 days granted earlier, plus 1 day granted for concurrent work order #5, plus 2 days recently granted by unilateral supplemental agreement.
9. **Repair to Pipe Joints**, 17 days – Repair work to the 66" pipe gaskets was deemed necessary after cleaning and desilting work was performed in the pipe. The cleaning and the desilting work could have been performed earlier in the project, and therefore the necessary gasket repair could have also been discovered and performed earlier in the project; however, the owner specifically requested Hubbard to wait until the end of the project to clean and desilt the pipe. Hubbard had specifically requested to perform that work earlier in the project. Hubbard is owed the additional time from September 23, 2003 to October 9, 2003, due to the owner precluding Hubbard from finishing earlier.

10-15) **Miscellaneous Delays During Punchlist Period**, 13 days (total of 17 working days requested minus 2 overlapping days previously granted weather days) – The following items include:

1. Expose Foundation Bolts, 1 day (July 30, 2003)
2. Place #57 stone, 4 days (June 10, June 11, July 23, July 24, 2003)
3. Construct Retaining Wall & Thire Rail, 2 days (July 24 and August 13, 2003)
4. Install Special Quad Guard, 7 days (August 13 – 29)
5. Fix Asphalt Shoulder outside Edge, 2 days (August 21 & 22, 2003)
6. Grade Shoulder for Drainage Slots, 1 day (August 20, 2003)

The work forces necessary to perform the additional work took away from the crews performing the punchlist work required to gain full acceptance of the project. The punchlist work was the controlling item of work through this period: therefore any disruption to those crews directly impacted the critical path.

## **DEPARTMENTS POSITION:**

1. **Barrier Wall (Temp.)Relocate:** Contractor did not utilize Lochner’s Temporary Concrete Barrier Wall records to determine the quantity discrepancy. Instead, Hubbard provided quantity calculation that is not in conformance with the specification’s method of measurement. There was no documentation as to the specific locations of barrier walls and therefore can not be verified. There was no explanation provided as to why there was an increase of 1,828.9 MI and where this amount was installed in the project. We therefore recommend that the request for additional quantities be denied.

2. **Asphalt Pavement Miscellaneous:** Contractor did not utilize Lochner’s Miscellaneous Asphalt Pavement record to determine the quantity discrepancy. Instead, Hubbard provided quantity calculation that is not in conformance with the specification’s method of measurement. There was no documentation of the calculations. In addition, Contractor used a theoretical spread rate that exceeded the maximum allowable, and they applied the contract unit price rate to a tonnage (English) quantity. We recommend no additional compensation because Contractor’s submittal doesn’t conform to the contract method of measurements and basis of payment and can not be substantiated. **(THIS ISSUE WAS WITHDRAWN PRIOR TO THE HEARING BY HCC)**

3. **Prestressed Beams:** Contractor did not provide convincing justification for this claim submittal. There were also missing documentations mentioned in the “Entitlement Analysis” necessary to review this claim. The requirements of the specifications are very clear and direct that cracks are repaired at no cost to the Department and that the concrete finish should be uniform appearance and no discoloration. The Designer of Record and FDOT Assistant State Structures Design Engineer reviewed the Finite Element Analysis submitted support design flaw theory. Both reviewers questioned the assumptions used in the analysis which Dura Stress never responded. We therefore conclude that this claim has no merit and recommend that it should be denied.

4. **Sodding:** We recommend denying the additional sod because they were either paid previously, damaged and resodded due to construction, and areas used as access road for the benefit of the Contractor. There is no time extension because sodding did not impact activity 20005 Punch List. Punch list work for shoulder pavement repair, friction course surface deficiencies, ITS, signs, and fencing were also performed concurrent with the sodding operation.

5. **Repair to Bridge Joints:** We recommend denying the time extension requested because it did not impact activity 20005 Punch List and denying the Additional compensation because bridge expansion joints were already paid for under original contract pay item no. 2460-7-12, Expansion Joint Seal.

6. **Light Pole Pilaster:** We recommend no additional time extension for this issue because:

1. Contractor submitted proposal after proposal to eliminate the widening of the southbound bridge making no conflict to the light pole pilaster if the Proposal was accepted
2. Contractor was advised through letter no. HWL-HCC.21268.027 dated Dec. 13, 2001 to work according to contract documents because of failure of the Contractor to convince the Engineer of Record that roadway width was available and will not create a drainage problem. Hubbard did not comply until January 15, 2005.

3. Contractor did not install the correct temporary barrier walls with 50% opening until January 28, 2002. the 50% opening of the temporary barrier wall was required by the plans for drainage and safety reasons due to the minimal existing bridge width
- 4 Contractor confirmed through their claim package submitted that from November 28, 2001 to January 15, 2002 was a self inflected delay.
7. **Working Room on SB Bridge:** We recommend no additional time for the “Working Room on SB Bridge” issue because:
  1. Contractor submitted proposal after proposal to eliminate the widening of the southbound bridge making “working room issue” not a conflict if proposal was approved
  2. Contractor was advised through letter no. HWL-HCC.21268.027 dated Dec. 13, 2001 to work according to contract documents because of failure of the Contractor to convince the Engineer of Record that roadway width was available and will not create a drainage problem. Hubbard did not comply until January 15, 2005.
  3. Contractor did not install the correct temporary barrier walls with 50% opening until January 28, 2002. That activity was completed on January 29, 2002. The 50% opening of the temporary barrier wall was required by the plans for drainage and safety reasons due to the minimal existing bridge width.
  4. Contractor confirmed through their claim package submittal that from November 15, 2002 (48 days) was a self inflected delay.
  5. Activity 02000 Actual Start Date was 1/28/02. As of 1/27/02 any impact to Activity 02000 was resolved. There was no impact on 1/30/02, the date requested.
  6. Time have been granted from January 16, 2002 to January 30, 2002 (13 days) through a parallel “Light Pole Pilaster Issue”.
8. **Ramp “G” Bridge Clearance:** We recommend no entitlement for Ramp “G” Bridge Clearance issue.
9. **Repair to Pipe Joints:** We recommend no time extension for the issue “Repair To Pipe Joints” due to construction deficiency since the:
  1. Contractor’s equipment damaged the pipe during installation.
  2. The Contractor re-used the deformed pipes.
  3. The Contractor had to install bigger gaskets to compensate for the wider joints (due to deformation of the pipe) as recommended by their supplier or manufacturer.
  4. The affected joints were discovered only at the location of the damaged pipes.
10. **Expose Foundation Bolts:** We recommend no time extension for the issue “Expose Foundation Bolts” because the day requested was concurrent with original work items.
11. **Placed #57 Stone:** We recommend no time extension for this issue “Placed #57 Stone” because the days tone is easier than constructing the ditches and sodding per original contract plans
12. **Construct Retaining Wall and Thrie Rail:** We recommend no time extension for the issue “Construct Retaining Wall and Thrie Rail” because the days Requested were concurrent with original contract work items.
13. **Install Special Quadguard:** We recommend no time extension for the issue “Install Special QuadGuard” because for September 16 and 18, 2003 under “Pipe Desilting 1650mm”.
14. **Fix Asphalt Shoulder Outside Edge:** We recommend no time extension for the issue “Fix Asphalt Shoulder but into the middle shoulder portion as well.
15. **Grade Shoulders For Drainage Slots:** We recommend no time extension for the work “grade shoulder for 2003 because the asphalt plant was closed due to rain.

### **CONTRACTOR’S SUPPLEMENTAL TO POSITION STATEMENT:**

Issue #3 (Prestressed Beams): Temporary Design Bulletin C04-01 dated February 3, 2004 states in part:

**COMMENTARY:** Cracking in the ends of AASHTO and Florida Bulb-Tee beams has been observed with vertical bursting reinforcing designed to 20 ksi stress, based on 4% of the bonded prestressing force and distributed over a distance of  $h/5$ , in accordance with the **LRFD** (2001) Section 5.10.10.1. To minimize these cracks and accommodate the longer distribution length ( $h/4$ ) adopted by **LRFD** in 2002, the maximum prestressing force in the ends of these

beams has been limited. Additionally the maximum design concrete strength at release has been limited to 6000 psi to control the amount of prestress in the ends of these beams. The maximum prestressing force is based on 13 ksi bursting steel stress for AASHTO and Florida Bulb-Tee beams. This is approximately equivalent to a 20% decrease in allowable stress from the LRFD (2001) requirements. Florida-U beams and inverted-T beams have not shown similar problems, so the maximum prestress force is based on 18 ksi and 20 ksi bursting steel stress respectively, which provides equivalent resistance to the previous LRFD (2001) requirements.

**BACKGROUND:** The use of higher strength concrete, higher release strengths and 0.6" diameter strands in recent years to accommodate longer spans and wider beam spacings, has resulted in much higher bursting forces in the ends of the prestressed beams. This has aggravated the minor cracking traditionally observed in the ends of these beams. Additional reinforcing was added to the ends of the prestressed beams in the June 30, 2000 release of the Standard Drawings to satisfy the Bursting Resistance requirements in the LRFD and utilize the full strand pattern available in most of these beams. Undesirable cracking in the ends of AASHTO and Florida Bulb-Tee beams has been reported for beam designs near the upper limits of the LRFD (2001) Bursting Resistance requirements. Additionally the 2002 Interim Revision to LRFD Section 5.10.10.1, which increased the bursting distribution length from h/5 to h/4, has effectively increased the allowable bursting forces by approximately 25%, necessitating reduction in allowable bursting stress or a limit on the maximum prestressing force in the ends of prestressed beams in Florida to control cracking.

**IMPLEMENTATION:** Effective immediately all projects under design using AASHTO Type II, III, IV, V & VI beams and all Florida Bulb-Tees should comply with these new requirements for both LFD and LRFD designs. Florida-U and Inverted-T Beams will not require any design changes if designed in accordance with Section 5.10.10.1 of the AASHTO LRFD Bridge Design Specifications prior to the Interim Revision. All projects let \_\_\_\_\_ etc. \_\_\_\_\_ etc.,

In response to the Owner's "Summary of Time Extension Entitlement Analysis", which was submitted prior to the previously scheduled DRB hearing, Hubbard first contends that this constitutes an "addendum" to their DRB submittal rather than a "rebuttal" to Hubbard's submittal. The table that was submitted by the Owner did nothing to rebut anything that Hubbard had submitted with our documentation, rather, it added to their original submittal. Hubbard also contends that this is a belated maneuver to strictly enforce the specifications at this stage of the process. The Owner had never enforced this specification throughout the course of the entire project, nor had they ever specifically denied any time extension request for such a reason. In fact, as indicated within the attached table, some time and dollars have already been granted for several of the contested issues that the Owner is now denying additional time for due to the 10-day notification requirement of the specification. Attached are minutes from Progress Meeting 075 on July 29, 2003 which includes a Tracking Log for Special Issues. Issue No. 27 is for "Contractor's Time Extension Issues", and this issue was included in the log with every meeting minutes from its origin date of March 5, 2002. From reading the Comments Section of the log, the Owner acknowledges specification section 8-7, but is waiving this provision by its actions on several occasions as listed in the table below. Hubbard understands that the intent of the contract is to ensure that the Owner is always aware of progress and issues on the project. Since this was a "partnered" project, the communications on the project were established such that all pertinent parties were privy to such developments and issues via discussions, meetings, etc. Even though the narrative and tables submitted in both the Owner's table and within this document reference formal written documentation that can be found, please note that lack of any such formal notice did not prejudice the Owner, as again, they were aware of the issues and developments at the project.

**Tables on Pages 34 & 35 of Supplement to Position Statement not included.**

#### **ADDITIONAL COMMENTS**

##### **Light Pole Pilaster:**

An official "time extension notification" was sent by Hubbard on Feb, 7, 2002, which IS within 10 days of the owners RFI on January 28 whereby they request a proposal. This is contrary to the Owner's list date of May 28 for notification from Hubbard. The Owner's attached RFI Log, dated 1/29/2002, reads "Correspondence #HWL-HCC-048, dated 01/28/02, provided two copies of temporary lighting package prepared by DOR and requesting an itemized cost breakdown for the extra work involved with this task, from HCC. This issue will now be tracked as a special issue and ultimately an SA or WO".

Hubbard's RFI No. 7 on October 23, 2001, is notification of delay.

The concurrent decision process on Hubbard's proposal to delete the bridge widening further "muddies" the picture. Progress Meeting (attached) dated November 27, 2001, reads that the date due for RFI 007 is "pending on decision on extra bridge widening work".

**Working Room On SB Bridge:**

The Owner is in error by dismissing this, as dates that they even list are within the 10 days requirement! The alleged commencement and ending dates of the impact are January 15 and January 30, 2002 respectively, and notification was given on January 23, 2002. The Owner's table irrevocably waives any impacted days prior to January 13, 2002, but there were no such days!

Executed Work Order No. 999-25-03 (attached) that compensates Hubbard monetarily for this work also includes a special note that reads "The Contractors right to pursue the compensatory time extension is acknowledged".

**In Summary,** Hubbard's interpretation is that issues #6, 7 and 8 all either had notification within 10 days of commencement and/or had notification due to extenuating circumstances and issues #5, 9, 11 & 12 had partial notification. Regardless of such requirement, Hubbard contends that the Owner waived the strict 10 day notification requirement of the specification section by never enforcing the requirement during the entire course of the project evidenced by never referencing the requirement during the negotiations for any time extension request and by never mentioning such as a reason to deny any time extension request. In addition, due to partnering and other means of communication, the Owner was always aware of all developments and issues on the project.

## **CONTRACTOR'S REBUTTAL TO OWNER'S POSITION STATEMENT**

### **General Response**

The Owner's position within each issue has a section entitled "What the Contract Says", but these insertions do not include all what the contract says, only what the Owner wants to display. As an example, the Owner's manual continually restates portions of the Special Provisions and Specifications throughout, specifically articles 8-3.2 and 8-7.3.2, and wants to argue that the 30 day activity Hubbard had at the end of the schedule is merely free float, while ignoring the most critical facts. This project included article 8-13 in the Special Provisions, which is a liquidated savings provision. This project was a competitive bid project and Hubbard, along with other bidders, looked at completing this project early because of the incentive provided in the bid documents. Hubbard actually took 30 days credit in its bid for planning to finish early, thereby giving the Department credit for that 30 day activity. Hubbard submits that the Department was compensated in the bid for the 30 days and does not get the right to be compensated twice, once by the bid (see attachment – page 10) and again by trying to claim it as "free float".

There is nothing in the documents that prohibits the Contractor for finishing early; in fact it is encouraged by the Contract. Hubbard was up front at the beginning by notifying the Owner it intended to complete early and in fact had notified the Owner, through subsequent meetings, that it gave the Owner credit for those 30 days in its bid. Hubbard realized it is not entitled for additional compensation, e.g. delay damages for those 30 days, but the contract does not prohibit it from collecting liquidated savings for those days or any days that the schedule is impacted. By its own admission, the Owner agrees that even concurrent delays are time excusable. The Contract Documents then allow for Hubbard to receive a time extension for any days that impact the critical path, concurrent or not, and collect liquidated savings for any days, plus delay damages for all days beyond the original allowable contract time.

In its analysis, the Owner tries to state that Hubbard is not entitled to additional time because it was concurrent with other activities or it gets to use the 30 day activity as free float. This is contrary to the very Contract Documents it continually states in its writings.

Another misconception is that Hubbard is responsible to fix any of the work after it has been inspected before final acceptance for no additional compensation. This is simply not true and not in accordance with the contract Documents. Please refer to Article 5-10.2 of the Standard Specifications which states "...Until final acceptance in accordance with 5-22, replace or repair any damage to the accepted Work. The cost of such Work will be

negotiated.” There are no strings or conditions on the statement. In fact it appears at the end of the article; therefore, any damage to accepted work should be compensated per the Contract Documents.

Another misconception of the Owner in its analysis is that a Contractor has unlimited resources. Hubbard does not have unlimited resources and did move some crews off the project to other obligations, leaving adequate crews to perform punchlist work. Any additional work added in the punchlist phase is additional work which does affect the critical path of the project. Even if Hubbard does find additional resources for the project it is still entitled to a time extension per the Contract Documents.

Hubbard submits that it had a right to complete the project early and was even enticed by the Contract to do so. It is entitled to a time extension and liquidated savings for any time impacts measured by its original schedule. The Owner received its credit in the bid for the 30 days and does not have a right to any of those days. And Hubbard deserves to receive liquidated savings for any time extension even though it may be concurrent because 8-13 and 8-7 allow this.

**1. Prestress Beams** - all responses will take place during the DRB Hearing on June 10.

**2. Barrier Wall (Temp.) Relocate**

The dates, quantities, foremen names, etc. forwarded by the Contractor to the Owner forms a major part of the project’s permanent records.

Please refer to the Owner’s Exhibits 1-11; 1-15; 1-16; 1-17; and 1-18. It is noted that under the “Remarks” column to the extreme right “Steve???” has signed against a date to the left of the page. On each line “stationing”, “quantities” etc. were entered. This will imply that “Steve???” has certified the information on each line. Also, the date could mean one of two things, either the work was performed on these dates or the entry was made on the corresponding date.

The Contractor’s records are dated on the day that a particular shift ends, not on the day it starts. The Owner may have dated their records otherwise. The discrepancies listed below exclude situations where the dates are one day apart to avoid misrepresentation of legitimate entries.

Only a few examples of the discrepancies are illustrated:

- (i) The Owner has entries dated 2/28/02, 3/7/02, 5/1/02, 9/17/02 and 9/26/02 on which barrier wall was handled (initial set or relocated). Hubbard’s records do not include these dates.
- (ii) Hubbard’s records show that barrier wall was handled on 1/31/02/, 2/1/02, 2/4/02, 2/25/02, 3/6/02, 3/11/02 and 5/6/02, but nothing was entered on these dates in the Owner’s records used to determine final pay quantities.

From the above, it stands to reason that the “dates” on the Owner’s records represent the dates on which “the entry was made” and not necessarily the date on which the work was performed.

There are some out of sequence entries made on the Owner’s records. Also, on the Owner’s Exhibit 1-18, the entries jump from 6/03/03 to 6/02/03, eventually to 11/09/02 then back to 6/13/02. Some of these entries were also crossed out.

The examples above show that inconsistencies in the Owner’s records prevent these documents from being a determining source of information in this resolution.

The “Computation Books” are not a part of the contract documents. However, the Owner’s comments shall be reviewed. On page 6 of the “Dispute Review Board Contractor’s Disputed Items”, the Owner refers to errors in the Computation Book. The Contractor also confirms that the Computation Books are inaccurate:

- (i) The phases referred to in the Computation Book for the Turnpike (1A, 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 2E) do not appear on the contract plan sheets;

- (ii) *There are extra phases included in the Computation Book that do not correspond to anything on the contract plans.*

*The Computation Book and thus the “Original Quantities” cannot be utilized in any final quantity determination. The Owner has based all their arguments on these erroneous “Original Quantities.” The Contractor has performed a totally separate quantity take off from the original plans, amended plans and the alternate traffic control plans, which almost exactly matches the Contractor’s records.*

*The Contractor has accepted the Owner’s final quantity for “Initial Set” and “Revised Initial Set” thus any difference in the total quantity is entirely attributable to “Relocate.”*

*The Owner’s manual quotes Special Provision Sub-article 102-8.7 as to how barrier wall is measured and paid. Hubbard’s quantity records approximately measured the barrier wall accordingly and therefore Hubbard expects adequate payment for such measurement.*

### **3. Miscellaneous Asphalt Pavement**

*The Contractor’s corrected amount requested is \$2,139.26, which represents payment for the revised disputed quantity of 21.39 metric tons.*

*The Contractor performed and installed the miscellaneous asphalt pavement and the work was accepted by the Owner’s representatives. Hubbard expects payment for the quantities documented in the proposal, with the understandable slight adjustment for utilizing 105 pounds per square yard per inch in lieu of 110 pounds per square yard per inch.*

*The narrative responses below typically begin with the Owner’s stated position from their manual in bold quotes, followed by the Contractor’s response*

### **4. Sodding**

- **“The resodding items are either caused by the Contractor or need to be done due to the Contractor’s means and methods...”** – extra work at various locations affected areas with finished sod, both as a direct result of the added construction area, as well as for access, such as for the quadguards and the retaining wall/thrie rail; regardless of how relatively “light” H. W. Lochner’s vehicles may be, they still contributed to the driven over areas, for which such vehicles included Lochner’s survey vehicles performing “as-built” duties.
- **“Neither fine grading nor sod were critical items of work in the updated schedule for the months of May and June 2003 nor impacted the activity 20005 Punch List...These activities were part of the original work and the Contractor was claiming them as additional grading and sodding”** – the Contractor is NOT pursuing time and money for the contract sod, for which Hubbard’s subcontractor performed, but only those areas of resod and associated added work for which Hubbard’s forces performed.
- **“Contractor also regarded and resodded the median...because the sod was placed higher than the paved shoulder...Sod had to be restored after constructing the concrete pads around light pole bases and pull boxes”** – Hubbard is NOT requesting compensation for areas of resod that were solely attributable to Hubbard’s responsibility.

### **5. Repair to Bridge Joints**

- **“On the August 1, 2003 update in which a copy was forwarded to Hubbard Construction, these items were still outstanding...The Daily Report of Construction indicated that the repair of the expansion joints was completed on August 7, 2003.”** – Hubbard still contends that the item was crossed off the punchlist on August 1, but the difference between August 1 and August 7 is largely immaterial.



- **“Removing an item from the semi-final inspection punch list does not constitute the item has been accepted.”** Standard Specification Section 5-10.2 states that once the Owner has acknowledged satisfactory completion of the work, any replacement or repair to accepted Work will be negotiated.
- **“After August 8, 2003, Hubbard Construction staff was verbally notified of the reoccurring stains on the end bent walls...”** Hubbard does not recall any such notification.
- **“If the repair is done properly, it should not leak. The only way to determine that is over time.”** again, Specification Section 5-10.2 states that once an item is deleted from the punchlist, it is deemed accepted by the Owner.
- **“The inspector is not responsible for identifying the 16 joint locations to be repaired”** - The Owner’s representative is responsible for inspecting and accepting the work, and such work is deemed accepted when the item is removed from the punchlist
- **“Hubbard requested 9 days of time extension whereas the actual work was performed in three hours. They even included October 10, 2003...”** - Hubbard is only requesting 9 days from October 1-9, 2003 which spans the date from which Hubbard was directed to repair the work until the project completion date of October 9. The days in between were necessary for material and crew procurement.

#### **6. Temporary Lighting/Light Pole Pilaster**

- **“Contractor submitted proposal after proposal to eliminate the widening of the southbound bridge making no conflict to the light pole pilaster if proposal was approved.”** - This still does not preclude the Owner from responding to the RFI, especially since the Owner was always leaning towards not accepting that proposal; nothing that the Contractor does or does not do erases the Owner’s responsibility of due diligence to answer a RFI.
- **“Contractor was advised...dated Dec. 13, 2001 to work according to the contract documents...Hubbard did not comply until January 15, 2002.”** – Hubbard was still unable to proceed due to the unanswered RFI; the Engineer was also still entertaining revised proposals from Hubbard.
- **“Contractor did not install the correct temporary barrier walls with 50% opening until January 28, 2002.”** – Hubbard and the Owner’s Representative had previously resolved any issues with this barrier wall; the barrier wall was in place and simply is not an issue in this case.
- **“Contractor confirmed through their claim package submittal that from November 28, 2001 to January 15, 2002 was a self inflicted delay.”** Supplemental Specifications Sub-article 5-12.6.2.2 Compensation for Indirect Impacts of Delay states “...in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department...”

#### **7. SB Bridge Working Room** (time requested is now one day based on 9 days recently granted for the concurrent Temporary Lighting issue)

- **“There was no impact on 1/30/02, the date requested.”...“Time has been granted from January 16, 2002 to January 30, 2002...”** “By the Owner’s own insertion, the “activity was completed on January 29, 2002” and according to the Owner’s Contract Day Table, January 29, 2002 has NOT been granted.

#### **8. Ramp G Bridge Clearance**

- **“the Traffic shift to Phase ID could have been carried out on March 18, 2002, but it was actually implemented on March 28, 2002 or 10 days late.” “...The analysis presented by the Contractor is flawed because they inserted the activity 03031 Clearance Problem with 36 days duration...”** – as Hubbard has stated many times, it is inappropriate to evaluate a schedule impact by comparing as-built construction dates and is inconsistent with Special Provisions Sub-article 8-3.2 Submission of Working Schedule, which is the method the Contractor utilized by inserting the activity.

**9. Repair to Pipe Joints** (general statements of response)

*The actual causes for the damaged gaskets can only be guessed. The facts are that the pipe manufacturer supplied all repair material for no additional cost to the Owner and the Contractor executed the repairs without any direct cost compensation. Whatever the cause of the damage, Hubbard is not seeking compensation for the repairs, but the damage should have been discovered long beforehand and the scheduling of any repairs would not have impacted the completion of the project.*

*The need to have the gaskets repaired could only have been realized after the pipe was cleaned. Thus, the events leading up to the delayed cleaning is the controlling factor for the pipe gasket repair.*

*In the dry weather months, Hubbard obtained a quotation from the Equita's Sewer Services to desilt this very pipe, EXHIBIT D. This quotation was forwarded to the Engineer on March 21, 2002. It was included as part of the pipe repair cost, EXHIBIT E. a supplemental Agreement was issued by HWL to repair the pipe but specifically excluded the cleaning of the pipe. **This pipe could have been cleaned since March or April 2002.***

*Included in Exhibit F is rainfall data obtained from the City of Orlando from a station in close proximity to the 66" pipe. The desilting work is very weather dependent.*

*On May 7, 2003, a fax-memo was sent to the Owner asking them to accept a price for desilting. The next day the quotation from Metro Sewer Services, dated April 1, 2003, was forwarded to the Owner pointing out that there may be some additional costs for Hubbard's related self-performed work. The Owner's Representative responded verbally that the price must be \$10,000.00 or less in order to issue authorization to begin. Please note that this occurred during the month of May 2003 when the rainfall was only 1.77 inches for the month (see Exhibits G and H). For the next month or so, Hubbard negotiated with different subcontractors to obtain the requested price of \$10,000.00.*

*On June 16, 2003, Hubbard received a revised price from Equita's Sewer Services based on their best assessment of the work to be done under mid June rainfall conditions, EXHIBIT J. This price was almost double the amount of the Turnpike's desired figure. Hubbard then sent off EXHIBIT K, a fax-memo to Mr. Murray Yates, the Senior Project Engineer, asking him to intervene in an effort to get this critical work completed. Hubbard noted their concerns of a possible delay to the completion of the entire project due to the handling of this matter by the Engineer.*

*The Engineer then verbally requested a breakdown of Equita's price. In an effort to record the Engineer's timing of request for the information, EXHIBIT L was issued.*

*Hubbard received the desired price breakdown on July 1, 2003 and forwarded this to the Engineer on July 2, 2003, EXHIBIT M. Hubbard then received the Engineer's notice to proceed on July 3, 2003 and revised version on July 9, 2003, EXHIBIT A.*

*The subcontractors visited the site on Monday, July 12, the first day after the revised notice to proceed was received. EXHIBIT N describes the problem of too much water in the pipe which would make the desilting operation inefficient. There was almost 10 inches of rain during the month of July, which prevented any work being started on the desilting operation.*

*In Lochner's letter HWL-HCC.21268.384, DATED August 1, 2003, the Engineer insinuates that Hubbard is "dragging their feet", not wanting to begin this work. This is at the end of the heaviest monthly rainfall for the year. The letter suggests using a plug and Hubbard forwarded a price for such on August 4, 2003 (see EXHIBITS O and P). Actual pumping of the pipe began on August 28, 2003.*

*In summary, in response to the Owner's contention that the Contractor was delayed in submitting a price for desilting and waited to clean the pipe, any such delay was largely contributable to the extended price negotiations*

requested by the Owner's Representative which then pushed the potential start of the desilting into the rainy summer season.

#### **10-15. Miscellaneous Punchlist Items** (general)

(attached is color version of Punchlist Period Timetable previously provided)

- **“...on May 30, 2003, Hubbard considerably reduced their staff to the barest minimum even though there was still plenty of work remaining such as SR 91 median grading, sodding, desilting, landscaping, ITS, lighting, paving, guardrail, signs, etc.”** – Hubbard reduced the size of the crews to what was appropriate for the remaining work; most of this described work is subcontract work and does not affect Hubbard's critical punchlist crews; Hubbard does not have unlimited crews and cannot immediately develop additional crews when additional work is added, therefore, it became the responsibility of the remaining crews to perform any additional work.
- **“...Activity 20010 was a dummy activity since there was no real work involved and was considered a float. Hence, the completion date was not impacted by this extra work.”** – as stated in Hubbard's narrative on page 6 of Hubbard's manual, every activity on the critical path has no float, including Activity 20010; float is defined as the number of days that can delay the early start or early finish of any given activity without affecting the respective late start or late finish dates of that activity, and given that the punchlist work was the last activity on the schedule, it's early and late finish dates were the same, with no float; any item which delayed the finish of the punchlist effectively delayed the completion of the project.

#### **10. Expose Foundation Bolts**

- **“The Contractor...covered the anchor bolts which are contrary to normal construction practices. The Contractor failed to notify Lochner...”** – neither Hubbard nor the Owner's representative discovered the problem until the DOT inspectors did; the Owner compensated Hubbard for this “design problem”, but did not include any additional time.

#### **11. Place #57 Stone**

- **“...additional work did not delay completion of the punchlist items because the areas had to be completed regardless if sod, MAP or crushed stone was placed.”** – if sod or MAP was placed, existing subcontractors could have performed the work rather than Hubbard's punchlist crew.
- **“Contractor waited more than a month to place Miscellaneous Asphalt Pavement and for that reason the crushed stone placement can't be completed in June...and Contractor's punchlist crew had to deal with the semi-final punchlist items...”** Contractor has the prerogative to schedule work efficiently enough to complete all work prior to contract completion, but does NOT have the responsibility to complete all work in order to absorb any possible delays or added work.
- **“...ITS...was not ready for inspection until August 15, 2003.”** – Hubbard's ITS subcontractor completed all physical work prior to July 18, 2003, and after that the DOT was questioning the reel test results, test procedures and the non-testing of the operating software, none of which dictated any physical field work.

#### **12. Retaining Wall and Thrie Rail**

- **“The sign uprights and bottom horizontal member were encased in concrete when the barrier wall was built which is contrary to normal construction practices. The contractor failed to notify Lochner...”** - Hubbard formed for the concrete which was inspected and approved by the Owner's representative; again the Owner compensated Hubbard for this work without any additional time.
- **“...days requested were concurrent with original contract work items.”** – once again, any concurrent work was being performed by subcontractors or was additional work, and again, such work only further delayed Hubbard's forces from achieving project acceptance.

### **13. Quadguards**

- *“...days requested were concurrent with original contract work items including the days previously granted for September...” – again, this work further delayed Hubbard’s forces from achieving project acceptance, and HCC is only requesting the days from August 13-19.*

### **14. Shoulder Asphalt Repair**

- *“...there was no instruction to the Contractor by Lochner’s Sr. Project Engineer to keep the broken shoulder in place.” – during an inspection with Hubbard’s Project Engineer, a 12’ tape rule was used to discern the proper edge of the 12’ shoulder, and Hubbard was not directed to replace the portions outside of that measurement.*
- *“Contractor’s time sheet does not indicate they worked on the median shoulders on these days” (August 21 and 22, 2003) – Hubbard’s time sheets DO indicate we did perform asphalt repair on those days; the repair days of August 6, 14, and 20 were used to repair the larger areas inside the 12’ line as depicted in the photographs on pages 94 and 95; only the smaller painted areas outside the 12’ line were repaired on August 21 and 22.*

### **15. Grade Shoulder for Drainage Slots**

- *“The repair work was necessary because the shoulder was not paved per the Standard Index. The first repair work was incorrect because it collected water thus requiring a second repair.” - Hubbard performed the work in accordance with the sketch provided in Exhibit 15-11 provided by the Owner’s Representative, for which resulted in the “collected water”; once again, the Owner compensated Hubbard for the additional costs with no time.*

## **DEPARTMENT’S REBUTTAL TO CONTRACTOR’S POSITION PAPERS:**

*After review of the submittal package provided by Hubbard Construction Co. and further review of the project records, it has been concluded that the applicable specification requirements for extensions to contract time needs to be emphasized. More specifically, the provisions of Sub-Article 8-7 of the Standard Specifications for Road and Bridge Construction (2000 version) contain specific requirements that pertain to the issues being brought to the DRB by the Contractor. For the DRB’s convenience, application of the referenced specification to the issues pertaining to requests for additional contract time have been summarized in three attached spread sheets.*

*For all time extension issues: Article 8-7 of the Standard Specifications (2000 Version) specifically requires the Contractor to: “Make a preliminary request for an extension of Contract Time in writing to the Engineer within ten calendar days after commencement of a delay to a controlling item of work. If the Contractor fails to provide this required notice, the Contractor waives any rights to an extension of the Contract Time for that delay. In the case of a continuing delay, the Engineer will require only one request. Include with each request for an extension of time a description of the dates and cause of the delay a complete description of the magnitude of the delay, and a list of the controlling items of work affected by the delay. Within 30 days after the elimination of or the written request from the Engineer, submit all documentation of the delay and a request for the exact number of days justified to be added to the Contract Time. If claiming additional compensation in addition to a time extension, include with the documentation a detailed cost analysis of the claimed extra compensation. The Contractor’s failure to deliver the required notice or documentation within the required period constitutes an irrevocable waiver of an extension to the Contract Time for that delay. The Contractor’s failure to provide sufficient documentation, justification, records, etc., to support a request for additional Contract Time is a valid basis for the Department to deny the request either in part or entirely.”*

### **1. Sodding Issue**

*From 5 June 03 to 21 Aug 03. Request for Time: 20 Sep 03. Ten days prior to the date of written notice is September 19, 2003. Therefore, only impact days occurring on or after September 19, 2003 can be considered for this issue. According to Spec. 8-7, a written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. According to Article 8-7, failure to comply with contract specification requirements dismisses this request. Entitlement for any impacted days prior to September 19, 2003 have been irrevocably waived.*

### **2. Repair to Bridge Joints**

*From 1 Oct 03 to 10 Oct. 03. Request for Time: 15 Oct. 03. Ten days prior to the date of written notice is October 05, 2003. Therefore only impact days occurring on or after October 05, 2003 can be considered for this issue. According to Spec. 8-7 a written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. According to Article 8-7, failure to comply with contract specification requirements dismisses entitlement for any impacted days prior to October 05, 2003.*

### **3. Light Pole Pilaster**

*From 23 Oct. 02 to 28 Jan 02. Request for Time: 28 May 02. Ten days prior to the date of written notice is May 18, 2002. Therefore, only impact days occurring on or after May 18, 2002 can be considered for this issue. According to Spec. 8-7, a written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. According to Article 8-7, failure to comply with contract specification requirements dismisses this request. Entitlement for any impacted days prior to May 18, 2002 have been irrevocably waived.*

### **4. Working Room on SB Bridge**

*From 15 Jan 02 to 30 Jan 02. Request for Time: 23 Jan 02. Ten days prior to the date of written notice is January 13, 2002. Therefore, only impact days occurring on or after January 13, 2002 can be considered for this issue. According to Spec. 8-7, a written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. According to Article 8-7, failure to comply with contract specification requirements dismisses this request. Entitlement for any impacted days prior to January 13, 2002 have been irrevocably waived.*

### **5. Ramp "G" Bridge Clearance**

*From 19 Feb. 02 to 28 Mar 02. Request for Time: 25 Feb. 02. Ten days prior to the date of written notice is February 15, 2002. Therefore, in this case the Contractor complied with the requirement for submission of an advance written notice. According to Spec. 8-7, written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. In this case the Contractor complied with the requirement for submission of an advance written notice.*

### **6. Repair to Pipe Joints**

*From 23 Sep. 03 to 9 Oct. 03. Request for Time: 15 Oct. 03. Ten days prior to the date of written notice is October 5, 2003. Therefore only impact days occurring on or after October 5, 2003 can be considered for this issue. According to Spec. 8-7, failure to comply with contract specification requirements dismisses this request. Entitlement for any impacted days prior to October 5, 2003 have been irrevocably waived.*

**7. Misc. – Expose Foundation bolts**

*From 30 July 03 to 30 July 03. Request for Time: 3 Oct. 03. Ten days prior to the date of written notice is September 23, 2003. Therefore, only impact days occurring on or after September 23, 2003 can be considered for this issue. According to Spec. 8-7 written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. According to Article 8-7, failure to comply with contract specification requirements dismisses this request. Entitlement for any impacted days prior to September 23, 2003 have been irrevocably waived.*

**8. Misc. Place # 57 Stone**

*From June 10, 2003 and July 23, 2003 to June 11, 2003 and July 24, 2003. Request for Time: 3 Oct. 03. Ten days prior to the date of written notice is September 23, 2003. Therefore, only impact days occurring on or after September 23, 2003 can be considered for this issue. According to Spec. 8-7 written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. . According to Article 8-7, failure to comply with contract specification requirements dismisses this request. Entitlement for any impacted days prior to September 23, 2003 have been irrevocably waived.*

**9. Misc. – Retaining Wall & Thrie Rail**

*From 24 Jul 03 to 10 Sep. 03. Request for Time: 3 Oct. 03. Ten days prior to the date of written notice is September 23, 2003. Therefore, only impact days occurring on or after September 23, 2003 can be considered for this issue. According to Spec. 8-7 written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. . According to Article 8-7, failure to comply with contract specification requirements dismisses this request. Entitlement for any impacted days prior to September 23, 2003 have been irrevocably waived.*

**10. Misc. – Install Special Quad Guard.**

*From 13 Aug 03 to 18 Sep. 03. Request for Time: 2 Oct. 03. Ten days prior to the date of written notice is September 22, 2003. Therefore, only impact days occurring on or after September 22, 2003 can be considered for this issue. According to Spec. 8-7 written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. . According to specification Article 8-7, if entitlement were to exist as alleged, the impacted days had to occur on or after September 23, 2003. No entitlement consideration can be given to days occurring prior to September, 2003.*

**11. Misc. – Fix Asph. Shoulder Outside Edge.**

*From 21 Aug 03 to 22 Aug 03. Request for Time: 1 Oct. 03. . Ten days prior to the date of written notice is September 21, 2003. Therefore, only impact days occurring on or after September 21, 2003 can be considered for this issue. According to Spec. 8-7 written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. According to Article 8-7, failure to comply with contract specification requirements dismisses this request. Entitlement for any impacted days prior to September 21, 2003 have been irrevocably waived.*

**12. Misc. – Grade Shoulder for Drainage Slots**

*From 20 Aug 03 to 20 Aug 03. Request for Time: 2 Oct. 03. . Ten days prior to the date of written notice is September 22, 2003. Therefore, only impact days occurring on or after September 22, 2003 can be considered for this issue. According to Spec. 8-7 written preliminary notice is required within ten calendar days after commencement of a delay. Failure to comply results in waiver of entitlement. According to Article 8-7, failure to comply with contract specification requirements dismisses this request. Entitlement for any impacted days prior to September 22, 2003 have been irrevocably waived.*

## **DEPARTMENT'S SUPPLEMENT TO PREVIOUS POSITION STATEMENTS**

### **1. Entitlement For Disputed Issues:**

*The Department respectfully requests the Disputes Review Board consider the requirements set for under Article 5-12 of the applicable contract Supplemental Specifications. In particular, the Department requests consideration is given to the fact that Hubbard has not complied with the requirements for submission of written notices and claim documentation.*

*For each issue in dispute having a monetary or time value, Hubbard has failed to complete one or more of the following requirements for each of the issues except for the Dura-Stress Claim.*

*Requirement No., Description and Specification:*

- (a) Provide the Engineer with written intent to make claim for additional compensation before beginning work. Subarticle 5-12.2.1 Claims for Extra Work.*
- (b) For any claim or part of a claim that pertains solely to final estimate quantities disputes, the Contractor shall submit full and complete claim documentation as described in 5-12.3, as to such final estimate claim dispute issues within 180 calendar days of the Contractor's receipt of the Department's final estimate. Submission of timely notice of intent of filing a claim, preliminary time extension documentation are precedent to the Contractor bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for items and notice of intent, preliminary time extension request, time extension request, claim and full and final complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim. Subarticle 5-12.2.1 Claims for Extra Work.*
- (c) Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for work or materials not expressly provided for in the Contract (Extra Work) or which is by written directive of the Engineer expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item, expressly notifying the Engineer that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay. The timely providing of a written notice of intent or preliminary time extension request to the Engineer are each as condition precedent to any right on behalf of the Contractor to request additional compensation or an extension of Contract Time for that delay, and the failure of the Contractor to provide such written notice of intent or preliminary time extension request within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or time extension for that delay. For this project, (which has an amount of more than \$3,000,000), within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete documentation as described in 5-12.3. There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not to a controlling work item, and then as to any such delay to a controlling work item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under 4-3 or 5-12, except that in the instance of delay to a non-controlling item of work the Contractor may be compensated for the direct costs of idle labor or equipment only, at the rates*

set forth in 4-3.2, and then only to the extent the Contractor could not reasonably mitigate such idleness. Subarticle 5-12.2.2

- (d) Certification under oath and in writing, in accordance with the formalities required by Florida law, that the claim(s) is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Subarticle 5-12.9 Certificate of Claim

The Department therefore respectfully requests the Disputes Review Board to find and recommend that Hubbard's failure to comply with specified contract requirements, as found under 5-12, constitutes a full, complete, absolute and irrevocable waiver of any right to additional compensation or a time extension for such claim (s).

**2. Dura-Stress Claim for Cost to Repair Cracked Class VI Prestressed Concrete Beams:**

A structural design criteria change has recently been implemented to acknowledge the need for rearing plates to add for strengthening the ends of concrete AASHTO beams deeper than 60 inches. This change applies to Type VI concrete beams. These changes are to address cracking that have been found to form in long beams. Reference is made to DCE Memorandum No. 20-05 dated August 19, 2005 which can be found at the following web address: <http://www.dot.state.fl.us/construction/memos/CVurrent Memo/Current Memo Main.htm>

In response to the above, the Department has decided to no longer dispute entitlement for the cost to repair the beam cracks, as experienced by Dura-Stress, and that occurred during the manufacture of Class VI beams used on this project. The Department hereby withdraws its previous position regarding entitlement for the cost of repairs to cracked beams and will proceed with negotiations with the Contractor to determine a fair and equitable amount of compensation for the extra work.

**Note:** The above applies only to the cost for repairing beam cracks. The Department's position on the issue pertaining to removal of stains from beam surfaces and the issue of interest due for alleged delayed payments remain unchanged.

**3. Temporary Concrete Barrier Wall Pay Quantities Rebuttal to Hubbard's June-05 Rebuttal:**

The information contained herein is intended to respond to Hubbard's amended rebuttal, to the owner's position statement, which was received on or about June 8<sup>th</sup>, 2005. The Department's original position is expanded to include this response to Hubbard's rebuttal.

We decline to comment on Hubbard's criticism of the records prepared by the field CEI staff. The records are what they are (i.e. a hand prepared, dated listing documenting the limits where temporary concrete barrier sections were placed by the Contractor). The records comply with the Department's Final Estimate Manual requirements and are the basis for contract payment records. In addition, the records are supported by daily diary entries that document the exact date of installation, the station to station location limits where the temporary wall was placed, the appropriate pay item and the resulting pay quantity.

Hubbard's Jun-05 rebuttal includes a take-off estimate of the latest version of the MOT plans. Hubbard presents a summary of findings resulting from their plans take-off which is repeated below.

Theoretical Quantity =	15,461.65 meters
Contractor's Quantity =	<u>15,495.665 meters</u>
Difference =	34.015 meters

The following two serious concerns arise from Department representatives' evaluation of the above information:



- A. *The theoretical quantity derived from a plan take-off apparently presumes temporary barrier wall was installed in strict conformance with the wall locations shown on the latest plan sheets. In reality this was not the case. There were a number of field deviations from the plan details. To adjust the Contractor's theoretical quantity to reflect known and documented field changes, the Department's records were reviewed once again and the location and estimated quantity of each field change was determined based upon the information included in the project records. The recollection of the CEI staff assigned to the job was also used to verify the location where field changes occurred. The results of this effort conclude that an estimated 855.735 meters of the temporary wall shown on the plans was never installed. The basis for this quantity and the reasons for the field changes are documented in the attached spread sheet. When this under run quantity adjustment is made to the Contractor's theoretical quantity the following results:*

<i>Theoretical Quantity =</i>	<i>15,461.65 meters</i>
<i>Field Change Under-runs =</i>	<i><u>-855.735 meters</u></i>
<i>Adjusted Theoretical Quantity =</i>	<i>14,605.915 meters</i>

*The Department's final estimate records show the quantity to be 14,642.600 meters. The adjusted theoretical quantity is within 36.685 meters (0.237%) of the adjusted theoretical quantity established by the Contractor. These records have been checked and rechecked and show the adjustments found to be appropriate to obtain accurate quantities for final payment. The CEI final quantities remain unchanged from the quantity presented for review by the Department's Turnpike Final Estimates Office Staff, the Contractor's Staff and the Disputes Review Board.*

- B. *The second comment results from observations and conclusion about the information presented to the Disputes Review Board (DRB) by the Contractor's Staff for the temporary concrete barrier wall final pay quantity. The Contractor's first submittal package does not provide a quantity Hubbard determined to be the correct pay quantity for each of the three temporary barrier pay items. There has been no supporting bonafide documentation showing the basis for Hubbard's position that they have been underpaid.*

*The Department's representatives have repeatedly requested Hubbard's staff to identify:*

*Where any errors exist in the CEI final pay records. On what date(s) and at what location did Hubbard furnish, install or relocate temporary barrier wall that has not been included in payments already made and to provide bonafide, reasonable documentation to support their position. It is the Department's position that to date, no such information has been presented.*

*Initially, Hubbard's Staff attempted to utilize their foremen daily reports to justify their position. Those reports should a quantity of barrier wall (measured or estimated in feet) that was reportedly handled by the work shift. What is not shown is where the wall units were used. The total quantity resulting from those records was:*

*39,056 lineal feet (converts to 12,026.188 meters) of relocated temporary wall and,  
13,176 lineal feet (converts to 4,017.07 meters) of initial furnish and install temporary wall.  
The total quantity was = 16,043.258 meters.*

*The Contractor's records and resulting quantities do not establish if all or if part of the wall was taken to storage sites, where installed on the job or if taken to another job. The only records and documentation presented by the Contractor's representatives were only presented informally and these records have been shown to be unreasonable and unreliable for use as a basis for adjusting the CEI final pay records. It can only be presumed that the reason for the obvious attempts to discredit the CEI records and the reason for attempting to utilize a theoretical quantity based on a plan take-off is that the Contractor has no real basis for justifying a quantity change. The Contractor's informally presented total quantity of 16,043.258 meters has been mysteriously reduced and is now presented formally as 15,495.665 meters, which is ironically very close to their theoretical quantity of 15,461.65 meters.*

*In summary, the Contractor continues to seek payment without providing legitimate reasonable documentation to support its position. Reasonable evidence has been provided to show that the latest theoretical quantity is not correct and does not account for field changes which are reflected in the CEI's final pay quantity and the records supporting that quantity.*

**4. SODDING – REQUESTED ADDITIONAL TIME:** *response to Hubbard's contention that Punch List Crew Work was the controlling item of work from July 10<sup>th</sup> (when a punch list was furnished) to August 20, 2005.*

**RESPONSE:** *During the months of July and August, Mastec was doing ITS work and installing overhead signing. Friction Course and pavement markings were still being worked on. These work activities must be given greater weight to controlling completion of the job than punch list work, especially minor sodding activities. For a list of work done, see Exhibit 12-2 in Lochner's previous submittal package.*

*Response to Hubbard's contention that the Punch List Crew was diverted to installing sod thereby making sod installation and repairs a controlling item of work and resulting in justification for extra contract time.*

**RESPONSE:** *By their own admission, it was believed by Hubbard's representatives that the resodding work at issue had to be installed at or near the end of the project, and would thereby impact controlling punchlist work. This is confirmed and documented by the last sentence on page 220 of Hubbard's prior position submittal package.*

*The Department does not control the Contractor's resources needed to complete construction work, including Sodding. Hubbard alone unilaterally decided not to use their sod subcontract for the Sodding work at issue. Hubbard alone, unilaterally decided to sue and when to use their punch list crew for the Sodding work at issue and Hubbard alone, unilaterally decided not to bring other resources (labor and equipment) onto the job site to do the Sodding work at issue. Therefore, any resulting contract time impact the Sodding work had on Hubbard's schedule was solely under their control and not the responsibility of the Department.*

**5. SODDING – PAYMENT:** *The information conveyed by Hubbard's staff for this issue is full of innuendos about failure to pay for sod used for erosion control, equipment needed to travel safely up and down the job, etc.etc.*

*Payment was made for re-sodding all the areas where minor extra work was added to the contract and when correcting washouts and when erosion control was needed. These reasons resulted in some areas of the job being re-sodded and paid for two or three times as is reflected in the final measurements for payment.*

*There were only three reasons used to define areas of non-payment. They were:*

- (1) Payment has not been made for locations where unnecessary and neglectful damage was done to previously sodded areas.*
- (2) Payment has not been made for locations where final grading was not done properly and resulted in the sod being above the edge of pavement. The sod was lost when removed and the areas(s) properly regarded. These were not areas where sod was placed for erosion protection. These areas referred to were final graded near the completion of the project.*
- (3) Payment has not been made where unsodded access points were prematurely final graded and sodded and then sod was rutted up and destroyed at the same or a very nearby location.*

*According to Standard Specification 575-3.4, the Department will pay for resodding necessary due to factors determined to be beyond the Contractor's control. The three reasons sited above represent areas where damage should have and could have been avoided or at least mitigated. Preventing neglectful damage to sod or the timeliness for scheduling sod placement/replacement was within the control of the Contractor in those cases where sod has not been paid for.*

**6. REBUTTAL FOR LEAKING BRIDGE JOINTS:** *Hubbard's staff wants everyone to accept that the bridge joints were damaged. The last paragraph of 5-10.2 refers to dealing with damaged work. Who and how was the*

determination made that the bridge joints were damaged? No reasonable evidence has been presented that shows damage was done by others.

The Department's position is that the joints contained latent defects resulting from poor workmanship. The failure to reject improperly sealed joints at the time of their installation is covered by Article 5-9.2 (see Spec. page 40). The basis for the conclusion a latent defect existed is that numerous joints were observed leaking in both the NB & SB Bridges (as reported in the June 23<sup>rd</sup> report), the need to repair leaking joints was added to the punch list, repairs were done then the issue was struck off the punch list under the presumption the problem had been taken care of. Subsequently some of the same joints started leaking again. In addition other joints began to leak. Leaking joints were then added back onto the punch list.

The 2<sup>nd</sup> paragraph of Article 5-10.2 includes the requirement that "Upon satisfactory completion of the Work, the Department will provide written acceptance, partial, conditional or final to the Contractor. FOR THIS PROJECT WRITTEN ACCEPTANCE WAS FURNISHED BY FINAL ACCEPTANCE OF ALL THE WORK AS PER ARTICLE 5-11 (See specification page 41). STRIKING THROUGH A PUNCH LIST ITEM DOES NOT EQUATE TO A WRITTEN ACCEPTANCE.

Specification Article 5-3 Conformity of Work to contract documents also applies to this leaking joint issue (see specification page 36).

In addition, Specification Article 7-14 entitled: CONTRACTORS RESPONSIBILITY FOR WORK, applies to the bridge joint issue (see specification page 68).

**DEPARTMENT'S REBUTTAL RESPONSE TO CONTRACTOR'S SUPPLEMENT TO POSITION PAPER (HUBBARD'S – September 06, 2005 SUBMISSION)**

**1. Rebuttal to photographs** of existing bridges with corrosion stained bottoms: It is the Turnpike's position that the photographs should not be used to influence the recommendation to be issued by the Disputes Review Board on responsibility for the cost of removing stains from bridge beams installed on the Turnpike Enterprise's Bridges Over I-4 constructed under contract number 21268. This position is supported by the following facts:

*The bridges photographed are not Turnpike Enterprise Bridges. The Turnpike only has authority and responsibility for its own bridges. The Turnpike is not required to answer for the actions or inactions or decisions made for bridges the Enterprise has no jurisdiction over.*

*No factual evidence has been resented that establishes if any specific arrangements were or have been made on the contracts for the photographed bridges. Additional factual information is required to verify if circumstances associated with the photographed bridges were the same as those that were applied to this Turnpike contract.*

*In the event others intentionally or unintentionally did not require compliance with contract specifications, for the 4 other bridges photographed, has no bearing upon the requirement to comply with requirements applicable to the Turnpike's contract number 21268.*

*There are 6,200 bridges on the Florida State Highway System. Photographs representing 4 other bridges with beam stains which presumably are all Dura-Stress created, has no known importance or influence on the conditions pertaining to this project. The 4 photo examples do not establish or constitute existence of an industry standard.*

*Four examples of possible failures by others to fulfill contractual obligations does not obligate the Turnpike Enterprise to allow the same performance or compliance failure to exist on its construction contracts.*

*The Turnpike respectfully recommends and requests the Disputes Review Board not place any weight and not be persuaded in any way by photographs of other bridges having nothing to do with contract number 21268.*

*The Turnpike Enterprise has the right to require compliance with specification requirements on its bridge structures.*

*The September 06, 2005, Supplemental package submitted by Hubbard included four documents pertaining to the beam crack repair issue. The Turnpike elects not to rebut those documents since the issue of entitlement to extra compensation has been conceded by the Turnpike.*

**2. Rebuttal to the Contractor's Supplemental pages 32 and 33 received on September 06, 2005.**

*Once again the Contractor is attempting to create their own self serving contractual terms and conditions that are not a part of the contract. The level or extent that the owner's representatives enforced provisions of the contract, partnered issues, negotiated in an effort to amiable resolve issues, and so forth, that did or did not occur during the course of this construction contract does not modify, change or waive the specific terms, conditions and requirements set forth in the contract documents. Article 5-12 of the contract specifications package includes previously cited provisions requiring the Contractor to provide written advance notice for any claim for extra compensation or extra time. The results of failing to comply with the specific contract requirements for written advance notice results in Contractor waiver of all rights as set forth in Article 5-12. The Contractor's failure to comply with requirements to provide written advance notices for time extensions precluded the Department from considering or making reasonable alternative business decisions. For example had the Contractor given advance written notice that the over-run resulting from minor sod work needed to finish the project, in compliance to the intent of the original contract, was going to cost \$4,000 per each day of such minor work, above and beyond the minor cost for the sod, obviously, the Department would have weighed the importance of the sod work and have Maintenance workers come in and do this minor work after the job was over. The Department quotes specific contractual requirements and seeks all parties abide by them (see Sub-article 5-12.2).*

**3. Rebuttal to the Contractor's Supplemental pages 24 & 35 along with the attachment referred to therein.**

Contractor's Spreadsheet Issue #4 – Sodding:

*Once again the Contractor appears to be creating their own self serving contractual terms. The Contract does not require written notice unless the work constitutes "one larger incident at any point in time". The Department's basis for not acknowledging additional contract time due to sodding work done near the end of the job is documented herein and in all previous submittals to the DRB and the Contractor.*

Contractor's Spreadsheet Issue #5 – Repair to Bridge Joints:

*The Contractor seeks to (after the fact) create a new term and condition for the contract. There are no known provisions for "warranty repair" included in the contract documents. The Department rebuts the Contractor's position by pointing out the requirements set forth under Sub-article 5-9.2 of the applicable Standard Specifications. That specification states: If during or prior construction operations, the Engineer fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such defect is discovered, or obligates the Department to final acceptance. The Department is not responsible for losses suffered due to any necessary removal or repairs of such defects."*

*As documented in the September 6, 2005 and in prior submittals to the DRB and the Contractor, the bridge joint work was unacceptable. The joint sealer allowed leakage of water through the joints in many locations. The joint repair work was documented and added to the punch list. The Contractor completed some repair work. It was thought the repairs were complete so the issue was taken off the punch list but subsequently the bridge joints were found to still be leaking. The concern was reinstated and the Contractor continued repairs. Based upon Specification Sub-article 5-9.2, "The Department is not responsible for losses suffered due to any necessary removal or repairs of such defects."*

**4. Rebuttal to the Contractor's Supplemental pages 36 & 37 along with the attachment referred to therein.**

*Contractor's Spreadsheet Issue #6 – Light Pole Pilaster*

*The Contractor contends that a delay started when RFI-007 was submitted. Now they indicate: "An official "time extension notification" was sent b Hubbard on February 7, 2002, which IS within the 10 days of the Owner's answer to the RFI on January 28 whereby they request a proposal. Sub-article 8-7.3.2 of the specifications states that the Contractor must "Make a preliminary request for an extension of Contract Time in writing to the Engineer within ten calendar days after commencement of a delay to a controlling item of work" (underlining added for emphasis). "If the Contractor fails to provide this required notice, the Contractor waives any rights to an extension of a Contract Time for that delay." Moreover, Specification 5-12, as has previously also been referred to, also reinforces the same requirement and establishes that the Contractor's failure to provide written notice results in waiver of all rights. The Contractor has simply reestablished its failure to comply with applicable terms of the contract documents by admitting to having not furnished a written request for a time extension until after RFI-007 was responded to.*

*The Contractor references Correspondence HWL-HCC-048, dated 01/28/02. That letter applied to an effort to address a different issue. A broader issue, concerning highway lighting for the job, surfaced as a result of the single light pole located on the SB and the NB Turnpike Bridges over I-4. This broader lighting issue resulted in a review of highway lighting along the Mainline Turnpike within the entire limits of the project. Design criteria was furnished to the Contractor via correspondence HWL-HCC-048. The entire broader lighting issue was listed on the tracking log, reviewed further and subsequently withdrawn and dropped. It appears the Contractor may be confusing different issues by referring to correspondence HWL-HCC-948.*

*The Contractor states that RFI No. 07 on October 23, 2001, is notification of a delay. A review of the referenced document reveals that no written notification of a delay is mentioned anywhere in that document.*

*The Contractor states that "The concurrent decision process on Hubbard's proposal to delete the bridge widening further "muddies" the picture. "Progress Meeting minutes attached dated November 27, 2001, reads that the due date for RFI 007 is "pending on decision on extra bridge widening work".*

*Rebuttal: The Contractor's proposal to eliminate widening the outside of the NB & SB bridges had a profound impact upon the answer for RFI 007. If the Contractor was successful in getting permission to eliminate the bridge widening, the light pole would not be removed and would need to stay in place providing light on the bridge until traffic was shifted off the bridge. If RFI-007 was responded to by telling the Contractor to remove it and the removal work proceeding, then if and when the Department denied the request to eliminate widening the bridge, payment would be necessary for the extra work of re-erecting the light nit. The correct response to remove or not remove the light pole was directly dependent upon the decision to accept or to not accept the Contractor's proposal to eliminate the bridge widening. The decision for widening the bridge was resolved on January 15, 2001. On January 16, 2001, the unavailability of design details for adding the temporary light pole onto the temporarily widened SB bridge became critical. The Department has acknowledged the reply to RFI 007 could have been made on January 16, 2001. Contract time has been granted from January 16<sup>th</sup> through January 28<sup>th</sup>, the day the formal response to RFI 007 and the light pole pilaster plans were given to the Contractor (Note: 4 of the days granted were overlap days with the barrier working room issue). It is suggested the review use the Contract Time Table provided in the front of the Department's initial position submittal package to assist in connecting the days and issues together.*

*In further rebuttal, the Contractor's own staff acknowledge during the Progress Meeting held on December 4, 2004 (2001) that the bridge light pole issue is dependent upon the outcome of the Contractor's proposal to eliminate the requirements for temporarily widening the bridges. This factual information can be verified by the progress meeting audio tape. The Contractor already has a copy of the tape and if needed, a copy of the tape will be furnished to the Disputes Review Board upon request.*

*The Contractor provides a copy of Progress Meeting Minutes dated November 27, 2001, and refers to the due date for RFI-007 as "pending n decision on extra bridge widening work". The statement is a brief comment*

that confirms the information presented in the two preceding paragraphs and serves to confirm that the outcome of the Contractor's proposal to eliminate the temporary bridge widening altogether did in fact impact the decision to authorize removal of the single light pole at issue.

### **Working Room on the SB Bridge**

The last paragraph on page 36 of the Contractor's additional comments indicates the Owner is in error by dismissing this (presume "this" means the working room issue) as the dates they even list are within the 10 days requirements. If the Contractor's rebuttal author had read the conclusions(s) column on the far right side of the referenced spread sheet being referred to and entitled: Summary of Time Extension Entitlement Analysis, he/she would have realized that the owner is not in error. The conclusion comment referred to reads: **In this case the Contractor complied with the requirement for submission of an advance written notice.**

The Contractor also references and provides a copy of Work Order No. 999-25-03 and refers to the special note that reads "The Contractor's right to pursue the compensatory time extension is acknowledged." The entire special note needs to be read. The full statement is quoted as follows:

*"The Contractor submitted a letter dated February 7, 2002, requesting a compensatory time extension. This contract time extension is not being resolved by this work order since no contract time is granted by this work order. The Contractor's right to pursue the compensatory time extension is acknowledged. **However, this acknowledgement shall not in any way be construed as establishing the validity of any request for compensatory contract time arising out of the work or the contract changes established by this work order.**" (Bolding has been added for emphasis).*

## **CONTRACTOR'S RESPONSE TO OWNER'S SUPPLEMENTAL PAPER DATED SEPT. 2, 2005. TURNPIKE /I-4 PROJECT**

### **General Response**

The comments referred to by the CEI in their Supplemental Paper dated September 2, 2005 referring to written notices is well covered in the Contractor's "Supplemental to Position Paper" submitted September 2, 2005. No additional material is offered at this time.

The following rebuttal is written as a part of the Contractor's original Position Paper. As such the present numbering system corresponds to the original numbers.

### **No2 Temporary Concrete Barrier Wall**

The CEI's original proposal contradicts their Supplemental Proposal.

The Contractor's final quantity is based on Timesheets and Foreman's Daily Records. The presentation of the theoretical quantity was simply to demonstrate how close the Contractor's figure is to the theoretical take off.

### **No.4 Sodding – Additional Time**

Regardless of the other operations on site, the CPM Schedule reflected that the "Punch List Items" activity was critical. Hubbard is entitled to time.

The CEI's staff and the Sod Subcontractor came to an agreement for the final quantity for sod on the Project. All of this quantity was accredited to the Sub Contractor's efforts. Nowhere in the final Pay Estimate was payment made for sod installed by Hubbard's forces.

The Sod Sub Contractor was not available for small areas to sod. Hubbard had to self-perform this work

**No5 Repair Leaking Bridge Joints**

*The Contractor refers to Article 5-10.2 Inspection for Acceptance "...If any or all of the work is found to be unsatisfactory, the Engineer will detail the remedial work required to achieve acceptance..." "...upon satisfactory completion of the work, the Department will provide written notice of acceptance, either partial, conditional or final to the Contract...."*

*This means, (1) a punch list will be provided by the CEI, and, (2) When an item is struck off that list this is indication of acceptance and that particular portion of the Project is completed and accepted by the Engineer.*

*The Contractor also understands from Article 5-10.2 that the punch list is final. Once these punch list items are completed, the Project is accepted.*

*The time for the repair of the joints is considered extra work per the last sentence in 5-10.2 "...until final acceptance in accordance with 5-11 replace or repair any damage to the accepted work. The cost of such work will be negotiated..."*

**BOARD FINDINGS:**

**Issue No. 1 – Barrier Wall (Temporary) Relocate:** Based upon the information submitted and testimony given at the hearing, the Board finds the records of both parties are somewhat lacking for item 2102-70-11, concrete Barrier Wall (temporary) per meter. The Special Provisions for this project on page 20 under item 102-8-7 states in part: "The quantity to be paid for will be determined by the number of precast sections times the nominal length of each section." The Contractor presented records from the foreman's daily time and materials reports with each day's count of the units of barrier wall. The Department furnished copies of a summary sheet which contained a compilation of the project inspector's daily reports.

Errors were pointed out in both the Contractor's and Department's position papers during the hearing, however the total unit count was more accurately presented in the Contractor's records. Therefore, the Board finds the Contractor is **ENTITLED** to the additional quantity of 853.465M of concrete barrier wall (temporary).

**Issue No. 2 – Asphalt Pavement Miscellaneous:** This issue was withdrawn prior to the hearing by the Contractor.

**Issue No. 3 – Prestressed Beams:** The Department in its September 15, 2005 Rebuttal to Contractor's Supplement to Position Statement on page 1 of 5, item 2, stated: "The September 06, 2005 Supplemental package submitted by Hubbard included four documents pertaining to the beam crack repair issue. The Turnpike elects not to rebut those documents since the issue of entitlement to extra compensation has been conceded by the Turnpike".

Based upon testimony presented at the hearing, the Department agreed to negotiate the claim for repairs to the beams and the interest due for late payment to the supplier. Due to the above agreement, the Board will not rule on this issue of repairs to the beams.

As to **Part 2 of this issue**, “Cleaning Rust Stains from the Bottom of Beams”, based upon the information presented and testimony at the hearing, the Board finds **NO ENTITLEMENT** for Cleaning Rust Stains.

**Issue 4 – Sodding:** Based on the information submitted and testimony presented at the hearing, the Board finds the Contractor has **NO ENTITLEMENT** to Direct cost and Time other than that granted during construction. Much of the sod replacement was a direct result of the Contractor’s operations. The Standard Specifications for Road and Bridge Construction (2000 Edition) in Section 575.3.7 – Maintenance, states in part: “Maintain the sodded areas in a satisfactory condition until final acceptance of the project. Include in such maintenance the filling, leveling, and repairing of any washed or eroded areas, as may be necessary. The Department will pay for resodding necessary due to factors determined to be beyond the control of the Contractor”.

From the evidence presented and testimony given during the hearing, the damaged areas were the result of the Contractor’s equipment.

**Issue 5 – Repair to Bridge Joints:** Based upon information submitted and testimony presented at the hearing, the Board finds **NO ENTITLEMENT** for the Contractor repairing the bridge joints. Ref: Section 7-15-Opening Sections of Highway to Traffic (2000 Standard Specifications) “whenever any bridge or section of roadway is in acceptable condition for travel, the Engineer may direct the Contractor to open it to traffic. The Department’s direction to open a bridge or roadway does not constitute an acceptance of the bridge or roadway, or any part thereof, or waive any contract provisions. Perform all necessary repairs or renewals, on any section of the roadway or bridge thus opened to traffic under instructions from the Engineer, due to defective material or work or to any cause other than ordinary wear and tear, pending completion and the Engineer’s acceptance of the roadway or bridge or other work, at no expense to the Department.”

**Issue 6 – Light Pole Pilaster:** Based upon the information submitted and testimony presented at the hearing, the Board finds **NO ENTITLEMENT** to the Contractor’s request for additional contract time.

In reviewing information presented, the Board developed the following chronology of time:

- (a) October 23, 2001 HCC Submitted RFI 007 which states: “Hubbard will be demolishing a light pole on the existing SB Turnpike Bridge over I-4. The temporary bridge plans do not replace this light pole. Will it be necessary to replace this light pole for temporary work?”
- (b) November 12, 2001 – Hubbard requested eliminating the bridge widening.
- (c) November 28, 2001 – The CPM schedule indicated the light pole issue becoming critical.
- (d) December 13, 2001 – The Department rejected HCC’s request to eliminate the bridge widening.
- (e) January 15, 2002 – The Department rejected HCC’s second request to eliminate the bridge widening.
- (f) January 28, 2002 – HCC received the plans for temporary lighting.
- (g) January 30, 2002 – HCC received letter from CEI to remove light.



In its letter of February 7, 2002, HCC states: “*Hubbard Construction Company failed attempt to make this modification/change, (added: eliminate bridge widening), is effectively a self-inflicted delay which effected the project from November 28, 2001 to January 15, 2002, a total of 48 calendar days.*”

**Issue 7 – Working Room on SB Bridge:** Based on the information submitted and testimony presented at the hearing, the Board finds the Contractor is **NOT ENTITLED** to additional contract time other than the days granted by the Department.

**Issue 8 - Ramp “G” Bridge Clearance:** Base on the information submitted and testimony presented at the hearing, the Board finds the Contractor is **NOT ENTITLED** to additional contract time other than the days granted by the Department.

**Issue 9 – Repair to Pipe Joints:** Based upon information submitted and testimony presented at the hearing, the Board finds the Contractor is **ENTITLED** to the requested 17 days contract time. The 1650 mm pipe floated twice during construction as a result of insufficient cover (design error). This condition was corrected by Supplemental Agreement. A detailed inspection of the total damage to other sections could not be made until the pipe was desilted. Since the desilting was not included in the corrective SA, the final determination of damage/repair could not be accomplished until near the scheduled end of contract time. Factual evidence was not presented concerning collateral damage the adjacent sections of the 1650 mm pipe suffered from the floating sections.

**Issue 10-15 – Miscellaneous Delays During Punchlist Period:** Based upon the information submitted and testimony presented at the hearing, the Board finds **NO ENTITLEMENT** to Issues 10, 11, 12, 14 and 15. As to Issue 13, Install Special Quad Guard, the Board finds the Contractor is **ENTITLED** to the requested 7 contract days.

**SUMMARY OF BOARD’S RECOMMENDATIONS:**

<b>Issue No. 1:</b>	<b>ENTITLEMENT</b>
<b>Issue No. 2:</b>	<b>Withdrawn</b>
<b>Issue No. 3: (1) Cracks</b>	<b>Will Negotiate Amount and Interest</b>
<b>(2) Rust Stains</b>	<b>NO ENTITLEMENT</b>
<b>Issue No. 4:</b>	<b>NO ENTITLEMENT</b>
<b>Issue No. 5:</b>	<b>NO ENTITLEMENT</b>
<b>Issue No. 6:</b>	<b>NO ENTITLEMENT</b>
<b>Issue No. 7:</b>	<b>NO ENTITLEMENT (Except days granted)</b>
<b>Issue No. 8:</b>	<b>NO ENTITLEMENT (Except days granted)</b>
<b>Issue No. 9:</b>	<b>ENTITLEMENT</b>
<b>Issue No. 10:</b>	<b>NO ENTITLEMENT</b>
<b>Issue No. 11:</b>	<b>NO ENTITLEMENT</b>
<b>Issue No. 12:</b>	<b>NO ENTITLEMENT</b>
<b>Issue No. 13:</b>	<b>ENTITLEMENT (Corrected 10/17/2005)</b>
<b>Issue No. 14:</b>	<b>NO ENTITLEMENT</b>
<b>Issue No. 15:</b>	<b>NO ENTITLEMENT</b>

It is sometimes argued that a DRB will provide a recommendation that ignores the contract or is somewhere in between the positions taken by each party; in effect, a compromise. It is not the DRB's prerogative to substitute its own ideas of fairness and equity for the provisions of the contract....

**BOARD RECOMMENDATION:**

**Based on the materials supplied to the Board and presentations to the Board at the DRB hearing, the Board finds entitlement or no entitlement as noted above on each issue.**

**The Board sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation.**

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

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

Respectfully Submitted

Disputes Review Board

E. K. Richardson, P.E., DRB Chairman  
John C. Swengel, DRB Member  
Jim D. Vest, DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:

A handwritten signature in black ink, appearing to read "E. K. Richardson". The signature is fluid and cursive, with a large loop at the top.

E. K. Richardson, P.E.  
DRB Chairman

CC: Edwin Alagano, Joe Chinelly, Tim Gough,