COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

Maria M. Oms
Auditor-Controller
John F. Krattli
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

February 27, 2006

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **HPD, Inc. v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 326 882

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of $425,000.00.

2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Public Works.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed for your information is the Corrective Action Report submitted by the Department of Public Works.

Return the executed, adopted copy to Georgene Salisbury, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-9910.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO:gs

Enclosures

MEMORANDUM

January 25, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: PAUL T. HANSON
Principal Deputy County Counsel
Public Works Division

RE: **HPD, Inc. v. County of Los Angeles, et al.**
Los Angeles Superior Court Case No. BC 326882

DATE OF INCIDENT: July 6, 2004

AUTHORITY REQUESTED: $425,000

COUNTY DEPARTMENT: Department of Public Works

CLAIMS BOARD ACTION:

☐ Approve ☐ Disapprove ☑ Recommend to Board of Supervisors for Approval

ABSENT, Chief Administrative Office
ROCKY ARMFIELD

John F. Krattli, County Counsel
JOHN F. KRATTLI

Maria Oms, Auditor-Controller
MARIA M. OMS

on February 27, 2006

HOA.344633.1

SUMMARY

This is a recommendation to settle for $425,000 a lawsuit filed by HPD, Inc. ("HPD"), for breach of contract arising from a Department of Public Works project for reconstruction of various streets, curbs, gutters, and sidewalks, including the removal and planting of trees in the vicinity of the City of Hawthorne, known as the "Prairie Avenue, et al." project ("Project"). HPD was the general contractor for the Project.

LEGAL PRINCIPLES

A public entity is liable for added costs incurred by a contractor on a public works construction project due to errors and omissions in the plans and specifications and directives to the contractor that increase the contractor's cost of performance. Time extensions to the contract arising out of approved change orders may entitle the contractor to additional compensation for overhead costs.

SUMMARY OF FACTS

The scope of work of the Project consisted of the following work on several streets in the vicinity of the City of Hawthorne:

- Reconstruction of roadway pavement;
- Reconstruction of curbs, gutters, driveways, sidewalk, and cross gutters;
- Construction of curbs, gutters, and curb ramps;
- Removal, root pruning, and planting of parkway trees; and
- Modification of traffic signals.

HPD was the low bidder and was awarded the contract, which was entered into on August 13, 2002. The original contract price was $2,021,201. The completion time was 90 working days. Work was to start on October 3, 2002, and was to be completed by February 14, 2003.

The Project was substantially completed on or about September 6, 2003.

There were 39 change orders which added $552,198 to the contract price and 185 working days to the time of the Project. The change orders did not address or preclude contractor claims for compensation for extended overhead costs.

HPD alleges that the plans and specifications did not clearly show that the elevation of the rebuilt streets would differ from their pre-reconstruction elevation. HPD contends that this difference in elevation substantially increased HPD's cost of performance.

HPD also contends that the County administered the project in such a way as to change the method by which it intended to do the work when it submitted its bid, thereby substantially increasing its cost of performance.

HPD also contends that the time extensions granted by the County entitle HPD to compensation for added overhead expense.

DAMAGES

HPD intends to prove at trial damages totaling $885,710, which are broken down as follows:

- $109,597 for unpaid unclassified excavation;
- $433,832 for added costs due to inefficiencies caused by the elevation difference and the change of the method of performance by the County;
- $112,091 for eight miscellaneous relatively small claims;
- $21,675 for penalty interest for late payment of retention; and
- $208,513 for increased overhead for the extra time needed for completion.

STATUS OF CASE

The proposed settlement was reached after a Court-ordered mediation. The mediator recommended a settlement in the range of $385,000 to $425,000.

In light of the proposed settlement the plaintiff has requested the Court to vacate the trial date previously set for February 22, 2006.

The County has incurred approximately $120,000 for attorneys' fees and costs.

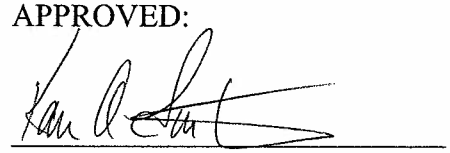
EVALUATION

At trial, the contractor's personnel are expected to testify that the actual time and cost of the project were greatly increased by the elevation differences and the County's change of their planned method of performance. HPD would argue that by granting the contractor change orders that added 185 days to the time of contract performance the County has admitted that the contractor is entitled to additional compensation for extended overhead costs, which the contractor claims exceed $200,000. HPD is expected to claim at trial the amount of additional contractual compensation stated above, $885,710.

At trial, the County would, of course, attempt to disprove any entitlement of HPD to additional contractual compensation; however, it is possible that the trier of fact would find that HPD is entitled to a much greater amount of additional contractual compensation than the amount of this settlement.

Given the considerable risk and costs of a jury trial, we recommend that this case be settled for $425,000. The Department of Public Works fully concurs with this recommendation.

APPROVED:



KAREN A. LICHTENBERG
Assistant County Counsel
Public Works Division

PTH: ia

DEPARTMENT OF PUBLIC WORKS
CORRECTIVE ACTION PLAN

LAWSUIT OF:	**HPD, INC., versus COUNTY OF LOS ANGELES, LASC Case No. BC 3326882.**
INCIDENT DATE:	**Construction Contract for Road Replacement and Repair, Prairie Ave. et al., ID No. RDC0013206, entered August 13, 2003; Claim Filed with Board of Supervisors, July 6, 2004.**
INCIDENT LOCATION:	**Project Location, Vicinity of Intersection of Prairie Ave. and Manhattan Beach Blvd., Near the City of Hawthorne.**

RISK ISSUE:

A public entity is liable for added costs incurred by a contractor on a public works construction project due to errors and omissions in the plans and specifications and directives to the contractor that increase the contractor's cost of performance over what the contractor expected when it submitted its bid. Also, time extensions to the contract arising out of approved change orders may entitle the contractor to additional compensation for overhead costs.

INVESTIGATIVE REVIEW:

This breach of construction contract lawsuit arose from a Department of Public Works project for reconstruction of various streets known as the "Prairie Avenue, et al." project ("project").

The scope of work on this project provided for: the reconstruction of roadway pavement, curb, gutter, driveways, sidewalk, cross gutters; the construction of curbs, gutters and curb ramps; the removal, root pruning, and planting of parkway trees; and the modification of traffic signals on several streets in the vicinity of Hawthorne.

HPD was the lowest bidder and was awarded the contract, which was entered as of August 13, 2002. The original contract price was $2,021,201.15. The completion time was 90 working days. Work was to start on October 3, 2002, and was to be completed by February 14, 2003.

The project was substantially completed on about September 6, 2003. There were 39 change orders which added $552,198.51 to the contract price and about 185 working days to the time of the project. The change orders did not address or preclude contractor claims for compensation for extended overhead costs. HPD contended that the time extensions granted by the County entitled HPD to compensation for added overhead expense.

HPD contended that the difference in elevation of the new streets as compared with the old streets was not shown clearly enough in the plans and specifications on which the bid was based, and that this difference in elevation substantially increased the difficulty and cost of performance.

Furthermore, HPD contended that the County administered the project in such a way as to change the order of work by which HPD intended to do the work when it submitted its bid, thereby substantially increasing HPD's cost of performance. HPD contended that contract provisions relating to the County's right to administer the project for the safety and convenience of County residents and the traveling public in the area of the project were ambiguously worded.

POLICY ISSUES:

The contract incorporated standard provisions from the Greenbook and Graybook that permit the County to require the contractor to change its method of performing the work if that method adversely affects the health, safety or convenience of County residents and the traveling public in the area of the project. The contractor contends that the County used this authority improperly.

The change orders, which include waiver and release language for additional claims arising out of the change order work, were not presented to the contractor for signature until after the project was substantially completed. At that point the contractor refused to sign any of the more than thirty-five change orders.

In the change orders, substantial time extensions were granted without obtaining the signature of the contractor that would have documented the contractor's waiver and release of any claim for additional compensation or time arising out of those change orders.

The contractor contends that the differences in elevation between the old streets and the new streets were not adequately demonstrated in the plans because the large scale of the drawings failed to clearly show the old and new elevations.

CORRECTIVE ACTION:

When appropriate to the nature and location of a project, the project special provisions will require the contractor to prosecute the work in identified phases of construction and substantially complete the work of each phase before work on the next phase is permitted to begin.

In the future, when changes in the work arise, the Construction Division will seek to obtain the signature of the contractor on the change order form, which includes language of waiver and release, at that time, rather than waiting until the project work is done. When proposing time extensions on project change orders, the contract provisions described in Section 6-6 of the Greenbook and Graybook will be applied.

During the constructibility review of the plans and specifications, the Construction Division will review the scale of the drawings to assure that the plans clearly indicate the scope of the work.