

March 6, 1996

Faxed March 6, 1996

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MK/Centennial  
6701 Muck Pond Road  
Seffner, Florida 33584

Mr. Rammy Cone  
The Cone Corporation  
P. O. Box 310167  
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Re: WPI No: 7143198  
State Project No: 10190-3428/6428  
F.A.P. No.: ACDPI-ACNH-0043-(6)  
Contract: Interstate 4, Segment 2  
Description: State Road 400 (I-4) from I-75 East to McIntosh Road  
Counties: Hillsborough

Subject: Disputes Review Board<sup>1</sup>  
Findings of Fact Pertaining to Thrie-Beam Guardrail Dispute

At the request of MK/Centennial (MK) and The Cone Corporation (Cone), hereafter referred to as the parties, the I-4 Project Disputes Review Board (DRB) was furnished written documentation, as well as oral presentation, relating to the referenced claim on the subject project. This review includes supplemental submissions by Cone dated February 15, 1996, the Florida Department of Transportation (FDOT) dated February 22, 1996, and MK dated February 28, 1996. All parties were furnished copies of these documents.

Issues: Cone requests separate payment for removal of each side of the double Thrie-Beam guardrail.

Cone claims ownership of the Thrie-Beam Rail from one side of the existing installation, unless each side of the installation is measured separately.

The existing guardrail on I-4 Segment 2, all of which is to be removed under this contract, consists of double-faced Thrie-Beam Guardrail in the median for the entire length of the job and some W Beam Guardrail on the outside shoulders, ramps and crossroads. The Bid Plan quantity of Guardrail Removal is 35,925 linear feet of which approximately 28,600 linear feet is for the removal of double-faced Thrie-Beam Guardrail in the median.

The Contractor contends that the guardrail quantity is substantially in error and should be increased approximately 28,480 linear feet to reflect the fact that the Thrie-Beam Guardrail is double faced. He gives the following rationale for his claim:

1. The Contract Plans fail to comply with the FDOT Basis of Estimates Handbook by omitting a tabulation of the Guardrail Removal from the Summary of Guardrail on Sheet 12. This summary, if properly completed, would have indicated how the bid quantity was determined and that it included double faced Thrie-Beam Guardrail to be paid on a linear foot basis for the net length.
2. The Special Provisions added Section 537 - Thrie-Beam Guardrail Removal and Stockpiling to the FDOT Standard Specifications which covered the removal, stockpiling and method of payment, but did not indicate that the item included double-faced rail.

3. Index No. 400, Guardrail, Sheet 4 of 15 under Guardrail Applications for Medians Greater Than 30 Feet and Less Than 50 Feet notes that “the back rail is to be paid for as Guardrail per L.F.” (this note pertains to installation). The Contractor concludes that the back rail is included for payment when installed, and without any notes to the contrary, should be included for payment when removed.
4. The Contractor also questions the ownership of the Thrie-Beam Guardrail and alleges that **Special Provision Article 61 - Guardrail**, which covers the removal and disposal of WB Guardrail, takes precedence over Technical Special Provision 537 which calls for the delivery of the **existing** Thrie-Beam Guardrail to the FDOT Maintenance Yard in Plant City.

The applicable references to Guardrail Removal in the Contract Documents are listed in the governing order per Sections 5-2 of the Standard Specifications.

Special Provision Article 61 - Guardrail

Expands Section 536 to include the Removal of Existing W-Beam Guardrail and states:

The quantity of W-Beam Guardrail to be removed under this Section shall be the length, in feet, measured prior to removal.

Payment for removal of Existing W-Beam Guardrail shall be made at the Contract unit price per linear foot. Such price and payment shall also include all cost of labor and equipment required for removal and disposal of the existing guardrail.

Payment shall be made under Item No. 536-73 - Removal of Existing Guardrail.

Technical Special Provision - Section 537 - Thrie-Beam Guardrail Removal and Stockpiling

Adds a new section covering the removal and stockpiling of the existing Thrie-Beam Guardrail on posts of timber or steel and states in part:

The Contractor shall maximize the amount of **salvageable** materials to be stockpiled.

The Contractor shall be responsible for the **delivery to and stockpiling at the FDOT Maintenance Yard** at Plant City.

The Contractor is responsible for the disposal of all **unsalvageable** materials.

The quantity of guardrail to be removed under this Section shall be the length in feet, measured prior to removal.

Payment for Removal of Existing Thrie-Beam Guardrail shall be made at the Contract unit price per linear foot. Such price and payment shall also include all cost of labor and equipment required for the loading of the existing Thrie-Beam Guardrail.

Payment shall be made under Pay Item No. 536-73 Removal of Existing Guardrail.

Payment for delivery and bundling of the existing Thrie-Beam Guardrail shall be made under Pay Item No. 110-86 Delivery of **Salvageable** Material to FDOT - lump sum as specified in Section 110 of FDOT Standard Specifications as amended.

Plan - Sheet 12 - Pav Item Notes

536-73 Existing guardrail to be dismantled. All existing guardrail within project limits is to be removed unless otherwise shown on plans.

536-73 Existing guardrail to be dismantled. All existing guardrail within project

Plan - Sheet 27 - General Notes

5. All existing guardrail is ultimately to be removed unless otherwise noted in plans. See Traffic Control Plans for specific location where existing guardrail is to be utilized for maintenance of traffic purposes.

Plan - Sheet T.C.-2 Traffic Control Plans General Notes

56. Existing Thrie-Beam Railing shall be utilized in early phases as shown on plans. All Thrie-Beam Railing shall be removed in the final conditions as noted in the Pay Item Note for 563-73 on Sheet 12. The Contractor shall stock 500 feet of rail for replacement if necessary, and paid for under the appropriate pay items.

Plan - Sheets

TC-6 Section 1A-4 & 1A-5

TC-7 Section 1A-12

TC-43 Section 1B-15

TC-77 Section 1C-8

TC-78 Section 1C-13

The above sections all show the existing **Double Faced** Thrie-Beam Guardrail labeled **Existing** Thrie-Beam Rail.

Plan Sheets.

TC-41 Section 1B-3

TC-42 Section 1B-8

TC-43 Section 1B-12 & 1B-13

The above sections all show the existing Double Faced Thrie-Beam Guardrail. They are not labeled.

The Board agrees that a properly completed tabulation of guardrail to be removed in the Summary of Quantities would have assisted the Contractor in his bid preparation. However, these quantities were tabulated on Form 600-040-16 in the Quantity Computation Book which, according to FDOT records, was furnished to the Contractor prior to the bid date.

Technical Special Provision 537 and the notes on Plan Sheets 12, 27 and TC-2 clearly indicate that all of the existing Thrie-Beam Guardrail is ultimately to be removed in coordination with the Maintenance of Traffic Plan. The sections on Sheets TC-6, TC-7, TC-41, TC-42, TC-43, TC-77 and TC-78 all clearly show the existing Thrie-Beam Guardrail to be double-faced. A field investigation of the site, as required by Section 2-4 of the Standard Specifications, would clearly indicate that the existing Thrie-Beam Guardrail, which runs down the median for the full length of the project, is double-faced.

It appears, therefore, that the Contractor had sufficient information prior to building the project to confirm the quality of Thrie-Beam Guardrail and establish the fact that the Thrie-Beam Guardrail was double-faced.

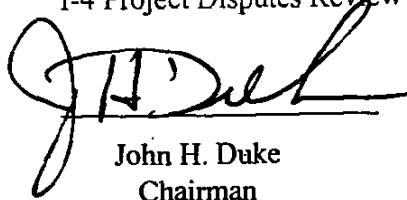
**The Board therefore finds no reasonable basis for the Contractor's claim and rules in favor of the FDOT.**

**The Board therefore finds no reasonable basis for the Contractor's claim and rules in favor**

Regarding the ownership issue, it is obvious that the Contract documents provide for the W-Beam Guardrail be removed and disposed of by the Contractor per Special Provision 61 and for the Thrie-Beam Guardrail to be salvaged and delivered to the FDOT Maintenance Yard per Technical Special Provision 537. Although there is not any specific mention as to the ownership of these materials, it is the Board's opinion that inclusion in the Technical Special Provisions "Removal and Stockpiling of Existing Thrie-Beam Guardrail" of a **provision for delivery to the DOT Maintenance Yard of Salvageable Materials is sufficient to establish DOT ownership of the Thrie-Beam Guardrail.**

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

I-4 Project Disputes Review Board



John H. Duke  
Chairman



G. A. "Dolph" Hanson  
Member



H. E. "Gene" Cowger  
Member

CC: Sandra M. Piccirilli, P.E.

