

# STATE ARBITRATION BOARD

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TALLAHASSEE, FL 32312-2837  
PHONE: (904) 385-2852 OR (904) 942-0781 FAX: (904) 942-5632

## NOTICE

In the case of Transportation Safety Contractors, Inc. versus the Florida Department of Transportation on Project No. 70906-9287 in Brevard County, Florida, both parties are advised that State Arbitration Board Order No. 1-96 has been properly filed on April 5, 1996.



H. Eugene Cowger, P.E.  
Chairman & Clerk, S.A.B.

S.A.B. CLERK

APR 5 1996

**FILED**

Copies of Order & Transcript to:

District Secretary/FDOT

Kenneth M. Winsbro, Project Manager/Transportation Safety Contractors, Inc.

## **STATE ARBITRATION BOARD**

**ORDER NO. 1-96**

**RE:**

**Request for Arbitration by  
Transportation Safety Contractors, Inc..  
Job No.70906-9287 in  
Brevard County**

**The following members of the State Arbitration Board participated in the disposition of this matter:**

**H. Eugene Cowger, P.E., Chairman  
Bill Deyo, P. E., Member  
Robert Burleson, Alternate Member \***

**\*Member John P. Roebuck was unable to be present at the hearing because his flight from Tampa that morning was canceled due to adverse weather conditions. He appointed Robert Burleson to serve as his alternate. Mr. Burleson will take part in the deliberations for this matter.**

**Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 9:00 a.m. on Tuesday, February 27, 1996.**

**The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 1-96 in this cause..**

### **ORDER**

**It was established at the beginning of the hearing that the DOT Standard Specifications Book does apply to this project.**

**The sole issue in dispute is payment for wind bracing on the back of the sign panels.**

**The Contractor presented a request for arbitration of a claim in the total amount of \$9,948.44.**

The Contractor presented the following information in support of his claim:

**PART I \$9,371.88 plus \$576.56 (INTEREST)**

Our interpretation of the contract is that the work included in this contract includes removal of existing sign panels, removal of existing posts, furnishing and installing new posts and reinstalling the existing sign panels on the new support assembly. Upgrading of the existing sign panels is not required except for the four (4) locations at which the contract provides specific instructions in regard to panels. We consider "existing sign panel" to include the sign panel, horizontal wind beams attached to the back of the sign panel, pipe stiffeners and related hardware.

The Department required us to upgrade the sign panels in accordance with their current Index No. 9535, the standard for Standard Roadside Signs.

Index No. 9535 shows details for installation of complete breakaway sign assembly. Payment under the item Sign Relocate Existing (Multi-Post) (It No. 700-46-22), as set out in Article 700-7 of contract specifications, covers only "furnishing and installing new posts, plates and hardware, any foundation or breakaway base as needed for relocation and/or reinstallation of the complete assembly". The term "hardware" includes only bolts, nuts, plates, etc. associated with the sign posts. Payment is not included for upgrading of the sign panels.

On projects for which bids were received after this project was completed, installation of wind beams, tube stiffeners and associated hardware was included in the Scope of Work.

The Location Sheets shown in the plans are intended to provide information on the pre-existing signs. In preparing our bid, we did not detect that the number and size of the wind beams shown on these sheets differed from what existed.

There was a non-mandatory pre-bid conference which we chose not to attend. The fact that a requirement that new wind beams must be installed on the existing sign panels was discussed at that conference is irrelevant, because an addendum covering this matter was not issued by the Department.

Our claim is for extra costs incurred in refurbishing sign panels as directed by the Department.

**PART II \$500.00**

The Department of Transportation should pay the administrative fee for this hearing.

The Department of Transportation rebutted the Contractor's claims as follows:

Index No. 9535 clearly shows windbeams, pipe stiffeners and hardware associated with proper sign panel erection.

The Basis of Payment for Item No. 700-46-22 states: "includes furnishing and installing new posts, plates and hardware." The backup bracing for sign panels is "hardware".

The Location Sheets included in the contract documents detail the number and size of wind beams to be installed on the sign panels.

The Contractor bid \$492.00 per unit less for the same type of signed installed on a subsequent contract located on the same road where the Scope of Work included installing wind beams and pipe stiffeners.

At the non-mandatory pre-bid conference it was made clear that the work included installing new wind beams on sign panels.

In his letter dated March 21, 1995 the contractor states: "We acknowledge that all of the above work is included in the Scope of Work for Pay Item 700-46-22 for the purposes of this Contract." We take this to mean that he is acknowledging that the work in question is included in the Scope of Work.

The Board in considering the testimony and exhibits presented found the following to be of particular significance:

1. All installations were bid under a single pay item, even though the work to be accomplished was significantly different for four of the installations.
2. Index No. 9535 applies to a complete new sign structure.
3. It was not clearly stated on the "Location Sheets" that they depicted the work to be accomplished in regard to the sign panels as opposed to depicting pre-existing conditions.
4. The Department's quotation of a sentence out of the Contractor's letter of March 21, 1995 is

taken out of context with the remainder of the paragraph in which it appears.


From the foregoing and in light of the testimony and exhibits presented, the State Arbitration Board finds as follows:

The Department of Transportation shall reimburse the Contractor in the amount of \$5,000 for his claim.

The Department of Transportation is directed to reimburse the State Arbitration Board in the sum of \$190.40 for Court Reporting Costs.

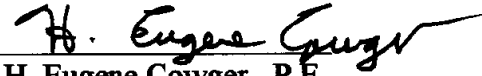
Tallahassee, Florida

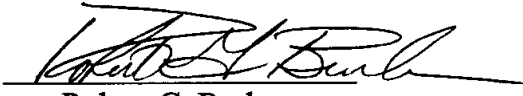
Dated: 05 April 1996

  
H. Eugene Cowger, P.E.  
Chairman & Clerk

Certified Copy:

  
Bill Deyo, P. E.  
Member

  
H. Eugene Cowger, P.E.  
Chairman & Clerk, S.A.B.

  
Robert G. Burleson  
Alternate Member

05 April 1996

DATE

S.A.B. CLERK

APR 5 1996

FILED

STATE ARBITRATION BOARD  
STATE OF FLORIDA

S.A.B. CLERK

APR 5 1996

TRANSPORTATION SAFETY  
CONTRACTORS, INC.

**FILED**

- and -

PROJECT NO. 70906-9287

LOCATION: Brevard County,  
Florida

DEPARTMENT OF TRANSPORTATION

**ORIGINAL**

RE: Arbitration In The Above Matter

DATE: Tuesday, February 27, 1996

PLACE: Florida Transportation Center  
1007 Desoto Park Drive  
Tallahassee, Florida

TIME: Commenced at 9:00 a.m.  
Concluded at 9:55 a.m.

REPORTED BY: CATHERINE WILKINSON  
CSR, CP  
Notary Public in and for  
the State of Florida at  
Large

WILKINSON & ASSOCIATES  
Certified Court Reporters  
Post Office Box 13461  
Tallahassee, Florida  
(904) 224-0127

## APPEARANCES:

## MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman  
Mr. Robert Burleson  
Mr. Bill Deyo

APPEARING ON BEHALF OF TRANSPORTATION SAFETY  
CONTRACTORS, INC.:

Mr. Carl Anthony  
Mr. Doug Hubbard  
Mr. Ken Winsbro

## APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Jim Connelly

\* \* \*

## I N D E X

## EXHIBITS

## PAGE

Exhibit Nos. 1 through 4 in evidence

4

## CERTIFICATE OF REPORTER

37

P R O C E E D I N G S

CHAIRMAN COWGER: This is a hearing of the State Arbitration Board established in accordance with Section 337.185 of the Florida Statutes.

Mr. Bill Deyo was appointed as a member of the Board by the Secretary of the Department of Transportation. Mr. John Roebuck was elected by the construction companies under contract to the Department of Transportation.

These two members chose me, H. E. "Gene" Cowger, to serve as the third member of the Board and as Chairman. The term of Mr. Deyo will expire June 30, 1997. The term of Mr. Roebuck will expire June 30, 1997. My term will also expire June 30, 1997.

For the record, Mr. Roebuck could not be here this morning because his plane got fogged in in Tampa or fogged out up here, whichever, and, therefore, he has appointed Bob Burleson, president of Florida Transportation Builders, to sit in his place as the contractor representative.

Does either party have any objection to that?

MR. CONNELLY: No.

MR. WINSBRO: No.

CHAIRMAN COWGER: Will all persons who will make an oral presentation during this hearing please raise



1 your right hand and be sworn in.

2 (Whereupon, all witnesses were duly sworn.)

3 CHAIRMAN COWGER: The documents which put this  
4 arbitration hearing into being are hereby being  
5 introduced as exhibits. The contractor's request for  
6 arbitration and the package of information that was  
7 attached, Exhibit 1. The DOT rebuttal exhibit dated  
8 February 14, which was furnished to the Board members  
9 and the contractor will be Exhibit 2.

10 Does either party have any other information it  
11 wishes to put into the record as an exhibit?

12 (Discussion off the record)

13 CHAIRMAN COWGER: We will come back on the  
14 record. During the brief time we were off the record,  
15 the DOT submitted a statement entitled "Summary," which  
16 is a summary of their position on the claim.

17 Also, the contractor -- and that will be  
18 identified as Exhibit 3. Also, the contractor  
19 submitted a two-page document entitled "Arbitration  
20 Notes," which will be identified as Exhibit 4.  
21 I believe that's all the exhibits then that we have.  
22 (Whereupon, Exhibit Nos. 1, 2, 3 and 4 were received in  
23 evidence.)

24 CHAIRMAN COWGER: Does either party wish  
25 additional time to examine the exhibits that were

1 submitted this morning?

2 MR. CONNELLY: No, I'm fine.

3 MR. WINSBRO: No.

4 CHAIRMAN COWGER: During this hearing the parties  
5 may offer such evidence and testimony as is pertinent  
6 and material to the controversy and shall produce such  
7 additional evidence as the Board may deem necessary to  
8 an understanding and determination of the matter before  
9 it. The Board shall be the sole judge of the relevance  
10 and materiality of the evidence offered.

11 The parties are requested to assure that they  
12 receive properly identified copies of each exhibit  
13 submitted during the course of this hearing and to  
14 retain these copies. The Board will not furnish a copy  
15 of these exhibits when we send out the court reporter's  
16 transcript to the parties.

17 The hearing will be conducted in an informal  
18 manner. First the contractor's representatives will  
19 elaborate on their claim and then the Department of  
20 Transportation will offer rebuttal.

21 Either party may interrupt to bring out a  
22 pertinent point by coming through the Chairman.  
23 However, for the sake of order, I must ask that you  
24 speak one at a time.

25 We are ready to proceed except, Mr. Deyo, did you

1 have a statement you wanted to make at this point or  
2 not?

3 MR. DEYO: No.

4 CHAIRMAN COWGER: Okay, in reference to our  
5 conversation earlier this morning, I didn't know if you  
6 wanted to say anything or not.

7 Okay. It will be appropriate now for the  
8 contractor to begin describing his claim. We do ask  
9 that you tell us initially what the total claim is. We  
10 know it's in the package, but we like to have it  
11 restated at this point.

12 One thing before you begin, a question I need  
13 answered. It's my understanding that this contract did  
14 not incorporate the DOT Standard Specifications. True  
15 or not?

16 MR. CONNELLY: It did.

17 CHAIRMAN COWGER: Your Standard Specification  
18 book.

19 MR. CONNELLY: It did.

20 CHAIRMAN COWGER: So, in looking at this, the  
21 only contract documents that we have are the special  
22 provisions that were included in the contract itself.

23 MR. CONNELLY: Right, and the standard index.

24 MR. HUBBARD: All of this is included.

25 CHAIRMAN COWGER: The Gray Book is not included,

1 is it?

2 MR. HUBBARD: Yes.

3 MR. CONNELLY: The Standard Specs.

4 CHAIRMAN COWGER: Okay. It is then. Okay. Now,  
5 you can proceed.

6 MR. WINSBRO: Okay. First off, as you requested,  
7 the grand total of Transportation Safety Contractors is  
8 wishing payment on, including interest, is \$9,948.44.

9 CHAIRMAN COWGER: May I interrupt you one more  
10 time. One statement I did want to make. We have  
11 allocated an hour to this hearing, and we could very  
12 well discuss this thing for two or three hours.

13 It's totally unnecessary on a claim that's less  
14 than \$10,000. Neither one of the parties up to this  
15 point really submitted a clear statement of their  
16 position. We now have through the exhibits the  
17 summary, a pretty good statement of the DOT's position.

18 So, that should help us get through this thing as  
19 quickly as possible. It's very important that we act  
20 in a very concise manner this morning. We can't afford  
21 to ramble around.

22 My understanding, though, to kind of focus the  
23 thing a little bit, my understanding is the sole issue  
24 in dispute is the wind bracing, the Z beams and so  
25 forth on the back of the sign panels.

1 MR. WINSBRO: Right.

2 CHAIRMAN COWGER: So, let's try to keep focused  
3 on that issue if we can.

4 MR. WINSBRO: Okay. I will just jump down to  
5 item C on my exhibit there, on my notes. During the  
6 course of the contract, a conflict arose between the  
7 field -- in the field between a DOT inspector and the  
8 TSC superintendent.

9 The inspector said that existing substandard sign  
10 panels that were to be relocated should be upgraded to  
11 current DOT standards.

12 The superintendent, we feel, properly disagreed  
13 with this and discussions began between myself,  
14 Mr. Connelly, and the maintenance engineer.

15 TSC was advised to request a time extension for  
16 the extra work, and to file a claim if we felt we were  
17 justified in -- if we felt like there was additional  
18 work, actually.

19 We did so, and then proceeded with performance of  
20 the extra work, which was to add the wind beams, the  
21 tube stiffeners, et cetera.

22 The third page on Exhibit D of my notebook that  
23 I submitted, that's the scope of work for contract  
24 E-5886. It says relocation of sign panels to new  
25 breakaway supports and adjust the height of one sign

1 panel. Installation was to be in accordance with Index  
2 9535.

3 My interpretation of that is the breakaway  
4 supports and the sign panels are to be in accordance  
5 with Index 9535.

6 The next page shows --

7 CHAIRMAN COWGER: May I interrupt you a second --

8 MR. WINSBRO: Sure.

9 CHAIRMAN COWGER: -- to make sure we understand  
10 what it is you are saying. The issue is -- the issue  
11 is the scope of work.

12 MR. WINSBRO: Right.

13 CHAIRMAN COWGER: Your position is there were  
14 some signs on the project that required refurbishing  
15 but not -- but there were only like three of them. Is  
16 that true?

17 MR. WINSBRO: My point in this statement right  
18 here is that required to complete the relocation of 22  
19 signs, if you read from the scope of work statement.  
20 Relocation of 22 signs to new two-post breakaway  
21 supports, and to adjust the height of one sign panel.

22 CHAIRMAN COWGER: Okay.

23 MR. WINSBRO: If you look at the next page, SP11  
24 and SP13, they go into greater detail to say that sign  
25 11, we are to adjust the height of the sign panel.

1           And then SP13 says that there are three signs the  
2           DOT would provide new sign panels and the contractor  
3           would install these new sign panels on new breakaway  
4           supports.

5           CHAIRMAN COWGER: Okay. That's where the three  
6           came from.

7           MR. WINSBRO: Right.

8           CHAIRMAN COWGER: I've got you.

9           MR. WINSBRO: My interpretation is that these  
10          four signs are the only signs that would be -- would  
11          have any work in addition to what is stated in the  
12          basic estimates description or in the contract  
13          description of the pay item number.

14          CHAIRMAN COWGER: All the signs were bid under  
15          one bid item, right?

16          MR. WINSBRO: Right.

17          MR. CONNELLY: Correct.

18          CHAIRMAN COWGER: It was called relocate existing  
19          signs.

20          MR. WINSBRO: Right. Okay. If you look at the  
21          next two pages, it gives the modified description of  
22          that pay item number, 700-46-2. It says the relocate  
23          item includes furnishing, installing new posts, plates,  
24          and hardware, any foundation or breakaway base that is  
25          needed for relocation and/or reinstallation of the

1 complete assembly at the location shown in the plans.

2 MR. DEYO: That's out of the basis of estimates  
3 manual?

4 MR. WINSBRO: This is out of the special  
5 provisions of the contract. This goes above and  
6 beyond.

7 MR. DEYO: These sheets were included in your  
8 spread package?

9 MR. WINSBRO: Right. My interpretation of that  
10 statement then is that new posts, fuse plates for the  
11 posts, which is plates, and hardware, which is bolts  
12 and nuts for the posts, foundations for the posts or  
13 breakaway bases are to be furnished and installed.  
14 This is in addition to the basis of estimates  
15 description.

16 Let me jump to the last page of Exhibit D, just  
17 to answer that. The pay item description from the  
18 basis of estimates manual says that under 700-46, the  
19 relocate item includes the reinstallation of the  
20 complete assembly at the location shown in the plans.

21 So, the basis of estimates basically says pull up  
22 the existing assembly, replant it in a new location.

23 The special provisions of the contract, we  
24 concur, modified that to include extra work pertaining  
25 to breakaway supports and foundation.



1           The next item is scope of work from a subsequent  
2 contract, which is an identical type contract that the  
3 DOT put out. If you look under the scope of work, it  
4 clearly states that wind beams, tube stiffeners and  
5 other associated hardware would be part of the scope of  
6 work to upgrade to the current standards.

7           MR. DEYO: This is not out of the --

8           MR. WINSBRO: This is the contract that bid  
9 probably --

10          MR. DEYO: It's not in 70906?

11          MR. WINSBRO: Right.

12          MR. DEYO: This is 90305.

13          MR. WINSBRO: This is 9299.

14          MR. BURLESON: When was that bid?

15          MR. WINSBRO: That was bid in August of '95.

16 This was actually approved by Richard W. Thompson on  
17 July 5, 1995, which happened to be about two months  
18 after we completed the previous project.

19          The next page after that goes into a pay item  
20 description of the 700-47-2 pay item, which is a  
21 reinstall existing signs on breakaway supports,  
22 multi-post. Here again it clearly states that wind  
23 beams, tube stiffeners, et cetera, would be added to  
24 the existing signs so that they would meet current  
25 standards.

1           Now, in the sense of keeping things rolling here,  
2           there is another contract which was bid in October of  
3           '95, the same type of contract, the same type of  
4           changes made to the scope of work and pay item  
5           description.

6           Now, my -- in conclusion, TSC feels like the  
7           contract documents for contract E-5886 did not  
8           adequately describe the work they intended to be  
9           performed and that the DOT has modified subsequent  
10          contract documents to reflect their recognized errors  
11          and omissions.

12          In addition to that, the contract E-5886 included  
13          a nonmandatory prebid meeting, and there were no  
14          addendums other than there was one addendum to the  
15          contract, which was to include Index 9535, but no  
16          discussion in that addendum of wind beams, tube  
17          stiffeners or refurbishing existing sign panels.

18          So, we feel like they recognized their error from  
19          our decisions on 5886 and changed it on subsequent  
20          contracts.

21          CHAIRMAN COWGER: This discussion took place  
22          when, the discussion you just mentioned that they  
23          recognized the problem and corrected it?

24          MR. WINSBRO: That was in our meetings in  
25          February. I've got --

1           CHAIRMAN COWGER: Not the preconstruction  
2 conference, but during the construction phase itself,  
3 after the dispute arose? Is that --

4           MR. WINSBRO: Changes to subsequent contracts  
5 were made as a result of our disagreement during the  
6 contract.

7           CHAIRMAN COWGER: I've got you now.

8           MR. WINSBRO: Now, there were discussions in --  
9 I understand that there were discussions in the prebid  
10 meeting, questions asked about wind beams and tube  
11 stiffeners, but I say that that was a nonmandatory  
12 prebid meeting, and there were no addendums to the  
13 special provisions resulting from that prebid meeting.

14          CHAIRMAN COWGER: You all were the prime  
15 contractor on this job?

16          MR. WINSBRO: Yes, sir.

17          CHAIRMAN COWGER: And you were not at the prebid  
18 conference?

19          MR. WINSBRO: The prebid conference, right. The  
20 nonmandatory prebid conference.

21          MR. DEYO: So, the contention is that there are  
22 certain signs identified, according to your claim, that  
23 did not spell out the need for wind beams to meet the  
24 standard index? Is there some instruction missing on  
25 that?

1           MR. WINSBRO: Right. That there were signs above  
2 and beyond what they did spell out for repairs or new  
3 panels or whatever, which required, in order to be up  
4 to snuff with the current standards, needed new wind  
5 beams and stiffeners.

6           This was not included in the contract to be bid,  
7 but then was included in the work to be performed after  
8 the fact.

9           MR. BURLESON: The special provisions of the job  
10 you bid specifically stated one sign panel that was to  
11 have the new wind beams installed, right?

12          MR. WINSBRO: No, it didn't even say that. It  
13 said that one sign panel, the height would be adjusted.

14          MR. BURLESON: It's a special provision --

15          MR. DEYO: And new wind beams will be installed.  
16 That's on SP-11.

17          MR. WINSBRO: Oh, yes, right.

18          MR. BURLESON: One sentence.

19          MR. WINSBRO: Right.

20          MR. BURLESON: What you are saying is all the  
21 rest of the signs that you relocated you didn't take  
22 into account the fact that you would have to provide  
23 that?

24          MR. WINSBRO: Right. I've got, the last few  
25 pages in Exhibit C in my notebook shows all of the

1 signs that did, in fact, require some sort of  
2 modification either to put on wind beams, tube  
3 stiffeners.

4 MR. BURLESON: Did you end up putting wind beams  
5 on all of the signs?

6 MR. WINSBRO: Yes. It changed either because of  
7 the spacing, the quantity of wind beams, the omission  
8 of tube stiffeners, or possibly that U-channel posts  
9 were used as Z-bar wind stiffeners.

10 MR. BURLESON: You are saying that any additional  
11 wind beam pricing that you had to do except for that  
12 one sign, was additional work?

13 MR. WINSBRO: Exactly.

14 CHAIRMAN COWGER: What you are saying is the way  
15 you bid the job is you would take the panels off,  
16 including the wind beam, disconnect them from the  
17 posts, let's say, and all your work was basically doing  
18 whatever had to be done to the posts and the  
19 foundations, then reattaching the sign panel that you  
20 took down?

21 MR. WINSBRO: Exactly.

22 CHAIRMAN COWGER: Does that pretty well simplify  
23 it?

24 MR. WINSBRO: Exactly.

25 MR. HUBBARD: And that there's other bid items

1           that could have been used for refurbishing of the  
2           existing sign panels.

3           CHAIRMAN COWGER: Got you. Is that it? You will  
4           have a chance to talk again if necessary.

5           MR. WINSBRO: Yep.

6           CHAIRMAN COWGER: Okay, Mr. Connelly, let's hear  
7           DOT's side of it.

8           MR. CONNELLY: The main contention here is in the  
9           scope of work itself. We want to bring to your  
10          attention in their letter to us dated March 21st, the  
11          second paragraph basically states, "We acknowledge all  
12          of the above work is included in the scope of work for  
13          pay item 700-46-22 for the purpose of this contract."

14          To us that was acknowledging that the work was  
15          included in the scope of work.

16          Now in our scope of work, the same one that's in  
17          the contract, if you will notice, on the very next page  
18          of this rebuttal, on the scope of work here, the last  
19          sentence, "Installation shall be in accordance with the  
20          roadway and traffic design standards Index 9535,  
21          Exhibit A.

22          To us that is saying all your signs are to be  
23          brought up to standard when doing the work. That was  
24          in the scope of work.

25          On the next page is the standard, which was part

1 of the contract included. If you will look, all that  
2 is highlighted is showing the stiffeners, the tube  
3 stiffeners, the wind beams, everything in question.  
4 That was in the contract package itself.

5 Along those lines, inside the contract package  
6 also on the location sheets, it's the sheets that look  
7 like this (indicating). We have the number of wind  
8 beams and the wind beam sizes for each sign in the  
9 contract package itself.

10 CHAIRMAN COWGER: Before you leave that exhibit,  
11 I have a question. Is it appropriate to ask it now?

12 MR. CONNELLY: Sure.

13 CHAIRMAN COWGER: Looking at these, what did you  
14 call them?

15 MR. CONNELLY: I call them location sheets.  
16 Basically it gives the mile post and the message, and  
17 it describes the sign itself.

18 CHAIRMAN COWGER: These were included in the  
19 contract package?

20 MR. CONNELLY: These were in the contract  
21 package.

22 CHAIRMAN COWGER: Okay. What were they intended  
23 to depict?

24 MR. CONNELLY: Basically these were to help the  
25 field personnel when they were out there to look. You

1           see what the sign says, and gives the personnel in the  
2           field a tool to work with.

3           MR. BURLESON: Is that the existing number of  
4           wind beams?

5           MR. CONNELLY: No, this is the number of wind  
6           beams that will be required on the new installation.

7           CHAIRMAN COWGER: How do I know that from looking  
8           at this? The drawing you have there, I'm looking at  
9           location number 1. The drawing there shows the sign,  
10          it shows in dash view four wind beams, I think, across  
11          the back of the sign.

12          I guess the question is was the drawing supposed  
13          to anticipate what existed out there or was it supposed  
14          to show what you anticipated, what you planned to have  
15          constructed?

16          MR. CONNELLY: This was to show what we planned  
17          to have constructed out there. This was a location  
18          sheet basically showing the message itself, the size,  
19          just general information for the workers out there in  
20          the field to work with.

21          CHAIRMAN COWGER: You are saying that these  
22          sheets do not depict what was in the field --

23          MR. CONNELLY: No.

24          CHAIRMAN COWGER: -- but what was to be  
25          constructed?



1 MR. CONNELLY: Correct.

2 CHAIRMAN COWGER: I assume the contractor will  
3 have something to say about that at the appropriate  
4 point.

5 MR. DEYO: Another question. You don't have the  
6 full plans and spec package with you?

7 MR. WINSBRO: There is no plans. This is the  
8 plans (indicating).

9 MR. DEYO: This package right here is the one  
10 that we requested, I think, on the -- that you  
11 submitted the claim, the Board requested the DOT to  
12 bring it. So, you have the whole package somewhere  
13 here?

14 MR. CONNELLY: Yes, I do.

15 CHAIRMAN COWGER: While Bill has asked that  
16 question, let me get one out of the way. I notice that  
17 in your submittal package that you have a section A700  
18 for highway signs, and then further back you've got  
19 another one, getting close to the back. You have  
20 another one called M700, highway signing. Which one of  
21 them was included in this contract?

22 MR. CONNELLY: This contract was the A700.

23 CHAIRMAN COWGER: And the M700 --

24 MR. CONNELLY: Was for the contracts that came at  
25 a later date where the contractor brought it up and

1 things were changed.

2 CHAIRMAN COWGER: Good enough.

3 MR. CONNELLY: That was part of the reason we  
4 wanted to bring these up, to show that the  
5 specifications had changed and that's why our verbiage  
6 had changed in the subsequent contracts.

7 CHAIRMAN COWGER: Okay.

8 MR. CONNELLY: Like I said, in the scope of work,  
9 we thought that we had incorporated everything that was  
10 to be brought up to standards. We made that statement  
11 in the scope of work.

12 It was brought up about the basis for estimates  
13 manual. That is a reference guide that we do use, but  
14 it is not a part of this contract package nor is it a  
15 supplementary document. I wanted to bring that to your  
16 attention. It is not part of this contract.

17 Like I said, it is a good reference guide for  
18 bidding, but it's not part of this contract.

19 On the contracts that Ken was speaking with  
20 concerning our future are the additional contracts that  
21 came out later. The specifications had changed during  
22 those contracts, and that's why the verbiage was  
23 changed.

24 Now, we did try to clarify it because we did have  
25 a problem on this contract, and we did change the

1           verbiage just to alleviate any problems. Whenever we  
2           can do anything to help clarify the picture, then we do  
3           it. That was a result of what we had done on this  
4           other contract.

5                   CHAIRMAN COWGER: So that there's no confusion,  
6           in your exhibit near the back you have several scope of  
7           work statements.

8                   MR. CONNELLY: These are --

9                   CHAIRMAN COWGER: Some of them are for this  
10          contract and some are for other contracts, correct?

11                  MR. CONNELLY: Correct. Yes, that's because the  
12          contractor had brought into play these additional  
13          contracts that went out to bid.

14                  As directed, under Florida Statute whenever DOT  
15          changes the standard maintenance special provisions, we  
16          are required to use those new special provisions, and  
17          that's what we did. That's what this subsequent  
18          verbiage was in the new contracts. That's why it's  
19          included in this package.

20                  MR. DEYO: That M700 has no bearing on your  
21          contract or the one he is claiming, it's just for the  
22          contractor's purposes of demonstration?

23                  MR. CONNELLY: Correct. We are showing why we  
24          did what we did on future contracts.

25                  CHAIRMAN COWGER: Just to be clear, going to the

1 back of your package I see some sheets that have  
2 numbers at the bottom. The one that's numbered 17,  
3 which is right near the back, and the one that's  
4 numbered 18 are both from other jobs?

5 MR. CONNELLY: Correct.

6 CHAIRMAN COWGER: That's all I needed to know.  
7 I was a little confused on the first one -- well, both  
8 of them. The first one has got 22 signs in it. That's  
9 what was confusing. Isn't that the same number you had  
10 on this job? You had three jobs that all had 22  
11 existing signs?

12 MR. DEYO: That was the same question I asked  
13 when he presented this was the job numbers are  
14 different in some of the exhibits in their package,  
15 which is confusing to the issue. Okay. That's for  
16 future reference. I understand why you did it.

17 MR. CONNELLY: We stayed with that amount of  
18 signage because we usually have a dollar limit when we  
19 put these contract packages together, and that's what  
20 we feel that we fall within that dollar amount.

21 I also want to bring to your attention, on that  
22 last contract, since the contractor had brought it into  
23 play, that the same contract was for 22 signs on that  
24 same roadway.

25 When they rebid it they bid it, I believe it was

1           \$429 less for each sign, yet they are asking  
2           compensation for this contract for the wind beams and  
3           the stiffeners and everything, and they do the same  
4           work on the same roadway for less money. That was the  
5           contractor saying everything was spelled out and  
6           clarified.

7           CHAIRMAN COWGER: Are you through?

8           MR. CONNELLY: Yes, that's it.

9           CHAIRMAN COWGER: I have one question. Going  
10          through and looking at these other contracts that were  
11          in here, it's interesting to note that there was an  
12          entirely different bid item in that it -- that the bid  
13          item on this project was 700-46-22, relocate, multiple  
14          post sign assembly. On the other projects the bid item  
15          was 700-47-2 and it was entitled sign, install existing  
16          or breakaway support.

17          So, does everybody agree that the bid items did  
18          not coincide between the two jobs?

19          MR. WINSBRO: We agree that they didn't coincide.  
20          We don't see that there's a lot of difference between  
21          the two items of work other than the basis of estimates  
22          actually says to include new posts and foundations on  
23          the 700-47-2, whereas on the 46-22 the special  
24          provisions say to include new posts and foundations.

25          MR. DEYO: I don't see it as being relevant to

1           the claim for the job 70906-9287. It just confuses  
2           with the numbers and the pay item numbers. So, if you  
3           take that off of both exhibits, DOT's and the  
4           contractor's, then we have a clear claim.

5                   CHAIRMAN COWGER: What you are saying is --

6                   MR. DEYO: If you keep referring me back to their  
7           numbers on another contract, then that clouds the  
8           issue, Gene. That's all I'm saying.

9                   CHAIRMAN COWGER: So, what you are saying is you  
10          think it was superfluous to submit all of this  
11          information about these later contracts?

12                  MR. DEYO: It's good to have that information  
13          available, but it clouds the issue of the claim  
14          pertaining to the instructions contained in the  
15          contract 5886.

16                  CHAIRMAN COWGER: We need to stay within the  
17          bounds of this contract is what you are saying, and  
18          I certainly agree with you.

19                  Okay. The DOT finished their presentation. Does  
20          the contractor have any rebuttal to what they said?

21                  MR. WINSBRO: Well, I guess I would go back to  
22          the DOT's exhibit, my letter of March 21, 1995, which  
23          DOT contends that I accepted their scope of work.

24                  I did accept their scope of work. I didn't agree  
25          with their interpretation of their scope of work from

1 the start. I don't feel like a statement that says  
2 furnish and install new posts, plates and hardware, any  
3 foundation or breakaway base as needed includes  
4 anything about refurbishing an existing sign panel.

5 The location sheets that are referred to in the  
6 DOT exhibit somewhere in here, here again to the number  
7 of wind beams, the size of the wind beams is very nice  
8 information to know how many bolts, how many times  
9 I have to bolt to a new post, how many times I have to  
10 punch a new post, but I still contend that nowhere in  
11 the contract was I able to interpret including new wind  
12 beams or stiffeners.

13 MR. BURLESON: Ken, can I ask you a question.  
14 Like location number one, I'm like Gene, I guess that  
15 shows four wind beams running horizontally across  
16 there?

17 MR. WINSBRO: Right.

18 MR. BURLESON: The existing sign that was out  
19 there, did it have wind beams, and how many?

20 MR. WINSBRO: I wouldn't have known that until  
21 they gave me a list or until I visited the job site and  
22 surveyed the job after I got it.

23 MR. HUBBARD: There's nothing in the plans.

24 MR. WINSBRO: There's nothing in the bid  
25 documents.

1 MR. BURLESON: I guess what I would be wondering  
2 is whether that was a drawing of what was there or what  
3 you were to put there.

4 MR. WINSBRO: Right. There's no direction.

5 MR. BURLESON: This is what you did put there in  
6 the end, is that correct?

7 MR. WINSBRO: Correct.

8 CHAIRMAN COWGER: Let me --

9 MR. DEYO: Can I see the total package so I can  
10 see what is missing from mine.

11 MR. HUBBARD: Actually, there were some other  
12 things that were put there to make it come up to this,  
13 stiffeners, plates, clips. It's more than just the  
14 Z-bar you are talking about, more components.

15 CHAIRMAN COWGER: I guess a very pertinent  
16 question would be, if anybody can answer this, two  
17 parts. First, the number of wind beams that were  
18 ultimately put on these panels, was it the same number  
19 of wind beams as was originally on there?

20 MR. WINSBRO: Say that again.

21 CHAIRMAN COWGER: When you took the sign panel  
22 down, ultimately had to take the wind beams off, and  
23 you reused that sign panel, right?

24 MR. WINSBRO: Right.

25 CHAIRMAN COWGER: And you installed new wind



1 beams, did you install the same number as had been  
2 taken off?

3 MR. WINSBRO: As pertains to location number one,  
4 there were only three wind beams existing on the sign  
5 panel, so we had to add new wind beams to that and tube  
6 stiffeners.

7 CHAIRMAN COWGER: Then the other question is why  
8 were the wind beams being replaced, because the  
9 structural design of the panel wasn't proper?

10 MR. CONNELLY: The signs weren't to standards.  
11 What it was, from previous years when they had been put  
12 up years ago, we wanted to bring them, when we  
13 relocated them, we wanted to bring the signs completely  
14 up to standards.

15 CHAIRMAN COWGER: The signs as they existed did  
16 not have adequate bracing on them in accordance with  
17 today's standards?

18 MR. CONNELLY: Correct.

19 CHAIRMAN COWGER: The DOT's position is that  
20 between the standard index drawing and these location  
21 sheets, that it was clear how many wind beams are going  
22 to be required, and since the number of wind beams was  
23 in excess of the wind beams actually -- the number of  
24 wind beams shown on these location drawings, at least  
25 at location number one, exceeded the number that

1           existed on the sign, that that should have led the  
2           contractor to believe that he had to replace the wind  
3           beams.

4           MR. CONNELLY: Right. It was our interpretation  
5           when the contractor looked at these signs and knew they  
6           had to bring them up to standards, that they would  
7           understand that there would be additional wind beams.  
8           They do this type of work and they would incorporate  
9           the new standards.

10          CHAIRMAN COWGER: Okay.

11          MR. WINSBRO: Index 9535 definitely gives you a  
12          lot of information about sign panel fabrication,  
13          required wind beams, but it also gives you a lot of  
14          information about breakaway posts, foundations,  
15          et cetera.

16          My interpretation of the scope of work is that  
17          new breakaway posts, foundations were to be furnished.  
18          Here again, there's no mention in the contract, in my  
19          interpretation, of refurbishing the existing signs.  
20          Therefore, 9535, all the information about how to  
21          fabricate a sign on 9535 seems to me to be just extra  
22          information.

23          Also, the statement in the scope of work, it says  
24          installation shall be in accordance with the roadway  
25          and traffic design standards, Index Number 9535.

1           It doesn't say signs will be refurbished and  
2           installed or furnished and installed per Index 9535.  
3           Therefore, I don't think that any change to the sign  
4           panels are included.

5           Maybe the intention was there, but the words were  
6           not.

7           CHAIRMAN COWGER: I think we understand that.  
8           Let me go back and ask a question about 93 -- 9535, the  
9           standard index.

10          If we are trying to use that to interpret the  
11          number of wind beams required, in the lower left-hand  
12          corner of that drawing, the number of wind beams for  
13          given depth and wind, depth is easy because it's shown  
14          on the drawings.

15          If I were to try to use that drawing, though, to  
16          determine how many wind beams are required -- and  
17          I realize on the location sheet you've got them spelled  
18          out -- one thing I've got to know is the design wind  
19          velocity.

20          MR. DEYO: It's shown on the map there.

21          MR. CONNELLY: Wind loading charts.

22          CHAIRMAN COWGER: I will withdraw my question.  
23          I didn't see that. Okay.

24          MR. DEYO: We've even changed it from Miami since  
25          Hurricane Andrew, too.

1 MR. HUBBARD: You've got it at 200 miles an hour  
2 now?

3 MR. DEYO: 110. Still won't get it, but that's  
4 more.

5 CHAIRMAN COWGER: Okay. That answered my  
6 question. Thank you.

7 MR. WINSBRO: Another statement that was made by  
8 Mr. Connelly that the basis of estimates are not part  
9 of this contract, I stated earlier that we do concur --  
10 well, let me back up.

11 The basis of the estimates forms the foundation  
12 of the pay item description. We do concur that in the  
13 contract the DOT can and does sometimes modify that  
14 description. We take that into account when we bid the  
15 job. I won't repeat my --

16 CHAIRMAN COWGER: Mr. Connelly, do you have  
17 anything else to say in that we are getting close to  
18 wrapping this up?

19 MR. CONNELLY: I did want to question the  
20 contractor is specifying he wants roughly under  
21 \$10,000. I want to bring to your attention that the  
22 second low bid was under a thousand dollars for the  
23 second low bid.

24 We feel that the \$10,000 is exceptionally high  
25 because the second low bidder could have come in and

1           done the job at the lesser amount.

2           CHAIRMAN COWGER: Of course, we have no idea how  
3 he would have interpreted the plans either, do we, the  
4 contract documents I should say.

5           MR. CONNELLY: True.

6           MR. WINSBRO: If I could comment on that. If you  
7 plan ahead to do a certain amount of work, it quite  
8 often is less expensive than if you've been stopped in  
9 midstream and have to reschedule your work and redirect  
10 your forces.

11          MR. BURLESON: Were you allowed to reuse any of  
12 the wind beams or did every sign have all new wind  
13 beams?

14          MR. WINSBRO: Really, I don't recall. I don't  
15 think there would have been a problem if we could have  
16 reused some, they just weren't in the quantity and  
17 size. I'm not positive whether we were able to reuse  
18 any of them or not.

19          MR. BURLESON: Was it basically these beams were  
20 bigger sections? The length wouldn't change on the  
21 beam, would it?

22          MR. WINSBRO: Some of them were too short to  
23 start with. The index says that the wind beams should  
24 go to within two inches of the edge of the sign. They  
25 may have been --

1 MR. DEYO: Some of them were like a foot or so --

2 MR. BURLESON: They were just whatever you have  
3 when you put the signs up?

4 MR. WINSBRO: Right. Some of them were U-channel  
5 posts rather than Z-bars.

6 MR. DEYO: One last question. On the contract  
7 general specifications, the examination of work sites,  
8 the responsibility of the bidder to examine carefully  
9 the site. Did you do that before you prepared the bid,  
10 prepared your total, since you knew about the  
11 foundation? Did you look at the location of the sites,  
12 these signs?

13 MR. WINSBRO: We didn't specifically go to each  
14 individual location. We have people working  
15 maintenance in that area frequently, and we have people  
16 up and down the road there, yes. We didn't look at  
17 each specific location.

18 CHAIRMAN COWGER: May I do a little summary of  
19 something here. I'm looking now at the DOT's rebuttal  
20 package. On about page four there's a page that's got  
21 number 2 at the bottom, talks about scope of work.  
22 What we see there is no specific reference at that  
23 point to the wind beams.

24 I just want to make sure that we understand that  
25 it didn't specifically mention that there, but it

1 didn't mention much else either.

2 The DOT has taken the position that the last  
3 sentence under scope says that the installation should  
4 have been done in accordance with 9535, and the  
5 contractor has already stated his position on that.

6 Now, if we jump on back to the section A700 and  
7 go to page five -- let's go to page four first because  
8 at the bottom of page four there is highlighted the  
9 item under which the work was to be done, sign existing  
10 relocate. I think we are in agreement that this  
11 establishes the basis of payment for the work, for that  
12 pay item.

13 So, at the top of the next page they've  
14 highlighted there that description of the scope. In  
15 the second sentence it talks about --

16 MR. BURLESON: Where are you, Gene?

17 CHAIRMAN COWGER: I'm sorry.

18 MR. BURLESON: All right.

19 CHAIRMAN COWGER: Under relocate it is spelled  
20 out the work that is included, "Furnishing and  
21 installing new posts, plates and hardware, any  
22 foundation or breakaway base as needed for relocation."

23 Now, DOT's position must be then that the word  
24 hardware includes everything that's needed to do the  
25 work.

1 MR. CONNELLY: Whatever is necessary to bring the  
2 signs to standards, correct.

3 CHAIRMAN COWGER: The contractor is taking the  
4 position that the hardware is primarily nuts and bolts  
5 and washers and that type of thing?

6 MR. WINSBRO: Right, for the posts, because the  
7 whole theme here is talking about posts and foundation.

8 CHAIRMAN COWGER: Right. The bolts that we are  
9 talking about were any bolts within the post itself,  
10 the post assembly plus obviously any bolts it took to  
11 reattach the wind bracing.

12 MR. WINSBRO: Right. Attach the existing sign  
13 to.

14 CHAIRMAN COWGER: Okay. Mr. Connelly.

15 MR. CONNELLY: If you will take a look at this  
16 pay item, this is the only pay item that closely fits  
17 what we are doing. The other pay items don't fit.  
18 This is the first pay item we had.

19 CHAIRMAN COWGER: This is the one you have  
20 identified, though, because you've bid it under 746, so  
21 that's got to be the pay item that applies. I don't  
22 think there can be any dispute over that.

23 Okay. Does either party have anything further to  
24 say?

25 MR. WINSBRO: No, sir.



1 MR. CONNELLY: No, sir.

2 CHAIRMAN COWGER: Mr. Burleson, do you have any  
3 questions? Mr. Deyo?

4 MR. DEYO: No, sir.

5 CHAIRMAN COWGER: Okay. This hearing is hereby  
6 closed. The Board will meet to deliberate on this  
7 claim in approximately six weeks, and you will have our  
8 final order shortly thereafter. That wraps it up.  
9 (Whereupon, the hearing was concluded at 9:55 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF LEON )

I, CATHERINE WILKINSON, Court Reporter, do hereby  
certify that I was authorized to and did stenographically  
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I FURTHER CERTIFY that I am not a relative, employee,  
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interested in the action.

Dated this 12th day of March, 1996.



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