

STATE ARBITRATION BOARD

1022 LOTHIAN DRIVE
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. 10906-9122 in Hillsborough County, Florida, both parties are advised that State Arbitration Board Order No. 2-96 has been properly filed on April 5, 1996.

S.A.B. CLERK

APR 5 1996


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

FILED

Copies of Order & Transcript to:

District Secretary/FDOT

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

STATE ARBITRATION BOARD

ORDER NO. 2-96

RE:

**Request for Arbitration by
Transportation Safety Contractors, Inc.
Job No.10906-9122 in
Hillsborough 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 10:00 a. m. on Tuesday, February 27, 1996.

The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 2-96 in this cause..

ORDER

The Contractor presented a request for arbitration of a five part claim in the total amount of \$79,464.16.

It is noted that the Department of Transportation Standard Specifications are not a part of the contract for this work, except for specific references to Construction Details and Materials Sections. The General Requirements and Covenants of the contract are in the District Contract General Provisions.

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

PART I \$5,220 + \$1,023.89 (INTEREST) = \$6,243.89

The Department of Transportation should release the liquidated damages (\$870 per day) and penalty (\$870 per day) for the three (3) they admitted in their letter of July 27, 1994 were incorrectly added to the contract time overrun.

We are claiming interest at the rate of one (1) percent per month for the period between July 1994 and January 1996.

PART II \$57, 420.00 + \$5,393.40 (INTEREST) = \$62,813.40

The Department of Transportation should release 33 days of the liquidated damages (\$870 per day) and penalty (\$870 per day) assessed. The 33 days are the number of days that the contract time should have been adjusted in accordance with Article 8-7.3.1, because the total amount of the contract was increased. $((\$174,416.26 - \$128,078.00) / \$128,078.00 \times 90 \text{ days} = 33 \text{ days})$

We contend that the Standard Specifications apply to this contract, because they are listed in Article 4.2 Coordination of Plans and Specifications on Page 8 of the District Contract Specifications.

The Supplemental Agreement that changed the wire size of conductors, added grounding electrodes and added the work of hooking up to 165 existing poles changed the nature of the work to be accomplished. Connecting to existing poles was a very time consuming task. When we executed the Supplemental Agreement, we added an extension of the contract time in the amount of 15 days. The Department struck these additional days from the document.

Shortly after charging of contract time was suspended on November 10, 1993 pending processing of the Supplemental Agreement, (34 days had expired) we notified the Department in writing that 90 days would be required to complete the work once we were allowed to proceed. Since no work was done prior to the suspension period, our request was to "restart the clock" at this point. The department allowed only 55 days.

All work on the project was substantially completed on April 11, 1994, except for boring and jacking of conduit at two locations and punch list items. The jack and boring work involved two runs of conduit. One was a pre-existing run and the other was a situation where the original installation was not successful because of a conflict with a water main that was mislocated on the plans.

We are of the opinion that some items on the punch list were subjective. We did not receive the

second punch list until May 14, 1994 about 30 days after all other work was substantially complete and only five days before project acceptance.

We are claiming interest at the rate of one-half ($\frac{1}{2}$) percent per month for the period between July 1994 and January 1996.

PART III \$3,480.00 + \$326.87 (INTEREST) = \$3,806.87

The Department of Transportation should release two (2) days of liquidated damages (\$870 per day) and penalty (\$870 per day) because of the time required to do the work of tie-in of wires and conduit at each pole added to the contract during construction. Thirty one additional days are actually justified because 1 $\frac{1}{2}$ hours of crew time was required to make the connection at each of 165 poles.

We are claiming interest at the rate of one-half ($\frac{1}{2}$) percent per month for the period between July 1994 and January 1996.

PART IV \$5,100.00

The Department of Transportation should pay the expenses we incurred for the personnel who have been arguing this claim over eighteen (18) months.

PART V \$1,500.00

The Department of Transportation should reimburse to us the administrative fee we paid to the State Arbitration Board.

The Department of Transportation rebutted each part of the Contractors claim as follows:

PART I

We agree that this part of the claim is valid provided that the remainder of the days assessed as liquidated damages and penalty stand.

PART II

This part of the claim is based on wording in Subarticle 8-7.3.1 of the Standard Specifications for Road and Bridge Construction which are not a part of the contract for this work. The District

Contract General Specifications included in the contract do not address increasing the contract time, because of an increase in the total contract amount caused by variations in quantities.

We deleted from the Supplemental Agreement the 15 days additional time hand written into the document, because this change was not initialed. The Contractor did not object to this action until after work was completed.

The Contractor delayed beginning work on the project.. He did not actively pursue the work and worked on other projects during the life of this project.

Since the 90 days additional time to complete the work after work resumed subsequent to the suspension of time charges as mentioned in the Contractor's November 19, 1993 letter was identical to the original contract time, we considered this to be a typographical error. Moreover, this is not consistent with the 15 days the Contractor's hand written addition to the Supplemental Agreement.

The Contractor did not pursue work on the punch list items, taking 35 days to complete them. Some of the punch list work consisted of re-doing splices which had leaked.

PART III

This part of the claim has no basis, because it is arbitrary and subjective in nature.

PART IV

This is an arbitrary and subjective evaluation. We question the hourly rates in the cost breakdown, because all employees, regardless of level within the company, are charged at the same rate. There is no breakdown showing how the hourly rates were derived..

PART V

We will leave a decision on this to the Board. .

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

PART II

Work on the project, except for punch list items, was substantially completed on April 15, 1994. The project was not accepted by the Department until May 19, 1994, thirty- five (35) days later.

The Department deleted from the Supplemental Agreement the fifteen (15) additional days added by the Contractor at the time he signed the document. The Contractor was not made aware of this unilateral action until he received a copy of the document after work had begun.

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

The Department of Transportation shall release thirty four (34) days of the liquidated damages assessed against the Contractor. No interest is due.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$250.80 for Court Reporting Costs.

S.A.B. CLERK

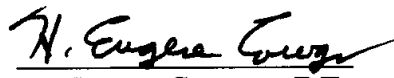
APR 5 1996


FILED

Tallahassee, Florida

Dated: 05 April 1996

Certified Copy:


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


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


Bill Deyo, P. E.
Member


Robert G. Burleson
Alternate Member

05 April 1996

DATE

STATE ARBITRATION BOARD
STATE OF FLORIDA

S.A.B. CLERK

TRANSPORTATION SAFETY
CONTRACTORS, INC.

APR 5 1996

FILED

- and -

PROJECT NO. 10906-9122

LOCATION: Hillsborough
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 10:00 a.m.
Concluded at 11:25 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. Michael Ellis
Mr. Daniel White
Mr. Ahmad Nawab

* * *

I N D E X

EXHIBITS

PAGE

Exhibit Nos. 1 through 5 in evidence

4

CERTIFICATE OF REPORTER

49

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. Eugene Cowger, to serve as the third member of the Board and as the Chairman.

The term of Mr. Deyo began July 1, 1995 and will expire June 30, 1997. The terms of Mr. Roebuck and myself began July 1, 1995, and will expire June 30, 1997.

Due to the weather conditions, Mr. Roebuck could not be here this morning. His flight out of Tampa was canceled. He, therefore, appointed Bob Burleson, the president of the Florida Transportation Builders, to substitute for him today.

Does either party have any objection to that?

MR. WINSBRO: No, sir.

MR. NAWAB: No, sir.

CHAIRMAN COWGER: Will all persons who will make

1 oral presentations during this hearing please raise
2 your right hand and be sworn in.

3 (Whereupon, all witnesses were duly sworn.)

4 CHAIRMAN COWGER: The documents which put this
5 arbitration hearing into being are hereby introduced as
6 Exhibit 1. The DOT rebuttal package dated February 13,
7 1996 is hereby introduced as Exhibit 2.

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

10 (Discussion off the record)

11 CHAIRMAN COWGER: Back on the record. While we
12 were off the record, there was a brief discussion of
13 additional exhibits. DOT has submitted a series of
14 corrections to their original Exhibit No. 2, which we
15 will identify as Exhibit 3.

16 DOT also presented a letter from Mr. Mike Lytle
17 dated February 22, 1996, which we will identify as
18 Exhibit 4.

19 And the contractor presented his arbitration
20 notes that he will refer to today. We will identify
21 those as Exhibit 5.

22 (Whereupon, Exhibit Nos. 1 through 5 were received in
23 evidence.)

24 CHAIRMAN COWGER:: I believe that completes the
25 identification of the exhibits.

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

8 The parties are requested to assure that they
9 receive properly identified copies of each exhibit
10 submitted during the course of this hearing and to
11 retain those exhibits. The Board will furnish the
12 parties a copy of the court reporter's transcript of
13 this hearing, along with its final order, but will not
14 furnish copies of the exhibits.

15 Now, we recognize that there's a problem in that
16 DOT inadvertently did not send the contractor a copy of
17 their February 13th rebuttal package. Do you have one
18 now?

19 MR. WINSBRO: No, I don't.

20 MR. NAWAB: I sent four copies.

21 MR. BURLESON: Do you want us to get a copy?

22 CHAIRMAN COWGER: Probably we ought to get one.
23 We will arrange to get that for you in just a moment.
24 (Brief pause)

25 CHAIRMAN COWGER: The hearing will be conducted

1 in an informal manner. First the contractor's
2 representative will elaborate on their claim, then the
3 Department of Transportation will offer a rebuttal.

4 Either party may interrupt to bring out a
5 pertinent point by coming through the Chairman.
6 However, for the sake of order, I must ask that only
7 one party speak at a time.

8 I think we ought to read into the record at this
9 point one other thing, and that is, as I mentioned
10 earlier, the DOT did not furnish a copy of the -- their
11 rebuttal package to the contractor. Therefore, if --
12 we have decided to proceed with the hearing, even
13 though it may leave the contractor at some deficiency.

14 We will at the end of the hearing give the
15 contractor the opportunity to decide at that point
16 whether or not he feels that he was inadequately
17 prepared because he didn't have this exhibit.

18 Number two, if that's the case, then the Board
19 will allow the contractor to submit a written statement
20 to expand on what he says here today, if necessary,
21 with the understanding that that statement will be sent
22 to the Board and to the DOT so they can have an
23 opportunity to comment. All of this will take place
24 then before the Board makes its decision.

25 Okay. I believe we are ready to proceed then.

1 Again, we ask that you state the total amount of your
2 claim at the beginning and then go ahead and proceed
3 with your statement, Mr. Contractor.

4 MR. WINSBRO: Okay. The total amount of the
5 claim is \$79,464.16.

6 CHAIRMAN COWGER: How much again?

7 MR. WINSBRO: \$79,464.16.

8 CHAIRMAN COWGER: Okay.

9 MR. WINSBRO: And the contract time of 65 days.

10 CHAIRMAN COWGER: Okay, but really what you are
11 requesting is release of 38 days of liquidated damages,
12 which figures out to be 66,120 plus some additional
13 costs related to preparing for this and the dispute and
14 all?

15 MR. WINSBRO: Right.

16 CHAIRMAN COWGER: Okay.

17 MR. WINSBRO: We are -- let me back up a minute.
18 I will start off, I just want for the record to show on
19 page eight of the contract, paragraph 4.2, coordination
20 of plans and specifications, it says, "The district
21 contract general specifications, the plans, special
22 provisions, and all supplementary documents are
23 integral parts of the contract and a requirement
24 occurring in one is as binding as though occurring in
25 all. In case of discrepancy, the governing order of

1 the documents shall be as follows."

2 And it goes through 1 through 6. Number 7 is the
3 Standard Specifications that I interpret to be the
4 Standard Specifications of Road and Bridge
5 Construction.

6 CHAIRMAN COWGER: So, are we in agreement that,
7 between the parties, that the Standard Specifications
8 as published in the Gray Book do apply?

9 MR. NAWAB: No, sir, we disagree with that. That
10 is the basis of the claim because this is, if you are
11 familiar, there is a Class 1 contract and a Class 7
12 contract.

13 This happens to be a Class 7 contract, which has
14 got its own district general specifications, which is a
15 counterpart of the division 1 of the Standard
16 Specifications.

17 Therefore, it does not apply. It greatly varies
18 in its requirement and instructions to the contractor
19 from the original one part of the Standard
20 Specifications.

21 Among other things it does vary as to pecking
22 order of the specification when they are in conflict.
23 Specifically, it addresses over here the increased
24 value should be -- along with the increased value of
25 the contract he should be awarded increased time, which

1 is not applicable in the district contract
2 specifications.

3 It has not said so. It is not mentioned anywhere
4 in the district specifications. Therefore, we take an
5 exception that it does not apply.

6 CHAIRMAN COWGER: We are a little bit beyond the
7 question I asked, and we will probably come back to it.
8 I'm sure we will. I think we ought to get this issue,
9 though, behind us as to whether or not the Standard
10 Specs apply because it may end up being pertinent.

11 Contractor, can you identify any place in the
12 contract documents where it says that the Standard
13 Specifications do apply?

14 MR. WINSBRO: None other than this location here
15 where the coordination of plans, and this is very
16 similar to the same way it's stated on page, I believe
17 it's 25 --

18 CHAIRMAN COWGER: We don't need that. We
19 understand. Okay. So, there is a dispute there over
20 whether or not the Gray Book applies.

21 MR. BURLESON: Where are you reading from?

22 MR. WINSBRO: This is page eight of the contract.

23 MR. BURLESON: I don't have that.

24 MR. HUBBARD: We don't understand how that could
25 be in question if it says does apply.

1 MR. NAWAB: If you look at the contract, page 14,
2 paragraph 6.5.3 and 6.5.4 it addresses the issue that
3 deals with adjustment of time for weather and other
4 delays. It's pretty much clear.

5 It says, "The Department's District Secretary or
6 Director, Florida's Turnpike may grant an extension of
7 the allowable contract time when a controlling item of
8 work is delayed by factors which are beyond the control
9 of the contractor." And it discusses weather
10 conditions and all of that.

11 It does not by the same token address the issue
12 of what happens when the increased value of the
13 contract is awarded to the contractor.

14 So, by -- it's very clear to us that since the
15 addressing of the increased value of the contract is
16 not covered here, therefore, the issue addressing the
17 increased time is not covered here as is done in the
18 Standard Specifications

19 CHAIRMAN COWGER: We are never going to get
20 finished if we don't stay on track. Please, confine
21 your arguments to what we are discussing, and we are
22 only discussing one thing now, whether or not the
23 Standard Specs apply.

24 All this other is good information but it's being
25 presented at the wrong point in time. We will get to

1 that I'm sure.

2 Okay. I think now that we have sufficiently
3 muddied the water, you might say, it's appropriate for
4 the contractor to proceed on with his presentation.
5 Hope we didn't cause you to be lost.

6 MR. WINSBRO: It would have been nice to have
7 known that ten days ago, I will say that. Let me refer
8 you to Exhibit H, the cover sheet of the contract, bid
9 blank.

10 This was a 90-day contract for \$128,078. The
11 first contract day was on October 7, 1993. The time
12 was suspended by the DOT after 34 calendar days. That
13 was at DOT's request to modify the contract and allow
14 time for a supplemental agreement to be processed.

15 Up to that point, day 34, no work had been
16 performed by the contractor. We acknowledge that there
17 was quite a bit of contract time that expired that we
18 did not perform any work, and we are not arguing that.

19 Supplemental agreement added a total of \$37,718
20 to the contract, the plan quantity amounting to that
21 much money. The supplemental agreement revised the
22 size of conductor to a larger wire, added ground rod
23 installation and added the hook-up of existing poles to
24 the work to be performed under the contract.

25 The heavier wire requires additional labor for

1 installation. Ground rod installation adds to the
2 total labor and time required for installation. Hookup
3 of the existing poles is a very time consuming task
4 that was originally to be performed by another
5 contractor under a standard work order contract.

6 The hookup also required that wire and conduit be
7 placed between the pull box and the pole. This was
8 paid under existing pay items but was a different
9 flavor, different mix of work, much more labor
10 intensive. The five feet of conduit there took much
11 more time than probably 100 feet of conduit along the
12 shoulder.

13 CHAIRMAN COWGER: May I interrupt you just a
14 moment. There was a separate bid item for conduit?

15 MR. WINSBRO: Right.

16 CHAIRMAN COWGER: The conduit that ran from the
17 pull box near the pole, up to the pole was added to
18 your work effort, was not in the original contract?
19 There is no argument about that I guess because it's in
20 the supplemental agreement?

21 MR. WINSBRO: Right.

22 CHAIRMAN COWGER: The payment was made under the
23 existing item for conduit, is that correct?

24 MR. WINSBRO: Exactly, conductor and conduit.

25 CHAIRMAN COWGER: So, really there was no change

1 in unit price, the supplemental agreement only
2 reflected you might say an overrun in quantity?

3 MR. WINSBRO: Exactly.

4 CHAIRMAN COWGER: I think I understand that now.
5 While we are on that topic, did your work originally
6 include any -- anything at all in regard to the poles
7 or was your work strictly in between the poles?

8 MR. WINSBRO: What we were told at the
9 preconstruction meeting, the poles each had wire and
10 conduit stubbed out of the pole to the pull box, to a
11 pull box, which was available.

12 Our work was to include the, what I would call
13 the main line trenching and conduit, the circuit work,
14 then the exact -- the pigtail wire out of the existing
15 pole was going to be tagged into the pull box by the
16 other contractor.

17 CHAIRMAN COWGER: So, you had nothing to do with
18 the poles themselves?

19 MR. WINSBRO: Exactly.

20 CHAIRMAN COWGER: That was my question. Before
21 we proceed on, one other question while we are stopped.
22 Those 34 calendar days prior to the suspension, was
23 there any reason you didn't work? Was there any reason
24 you couldn't work? That's the question, really.

25 MR. WINSBRO: No, there wasn't any reason we

1 couldn't work. If we had, we would have been replacing
2 a lot of work, I guess, is my only comment, because of
3 the changes.

4 CHAIRMAN COWGER: As it turned out, you would
5 have installed a lot of wire that was the wrong size?

6 MR. WINSBRO: Exactly.

7 CHAIRMAN COWGER: Okay.

8 MR. WINSBRO: By letter, when we submitted the
9 pricing for the supplemental agreement, TSC requested
10 90 days to complete the entire job after resumption of
11 time.

12 MR. BURLESON: That's an additional 34 days?

13 MR. WINSBRO: Right, an additional 34 days.

14 CHAIRMAN COWGER: What you really wanted to do
15 was reset the clock at that point?

16 MR. WINSBRO: Exactly. The supplemental
17 agreement included no time extension, as prepared by
18 the DOT. Prior to execution by TSC of the supplemental
19 agreement, before Mr. Hubbard had signed it, the 15
20 calendar day time extension was added to the SA as a
21 condition of agreement by TSC. That was an internal
22 agreement.

23 Upon receipt by the DOT, this time extension was
24 whited out without concurrence by the contractor.

25 CHAIRMAN COWGER: Was there even any discussion?

1 MR. WINSBRO: There was a telephone call. I got
2 a telephone call from Mr. Ellis which said somebody
3 changed this. I said, well, we did. That's what we
4 are asking for.

5 He said, well, that's never going to fly, and
6 that's about all there was to it.

7 MR. DEYO: When you changed the supplemental or
8 put 15 days on there, did anybody in your firm initial
9 that?

10 MR. WINSBRO: No, we didn't initial that at the
11 point where we changed it. It was signed just
12 underneath that.

13 CHAIRMAN COWGER: At that point you knew before
14 you proceeded with work under the supplemental
15 agreement that the 15 days had been deleted, is that
16 correct?

17 MR. WINSBRO: No.

18 CHAIRMAN COWGER: After you began?

19 MR. WINSBRO: We knew that somebody in DOT said
20 that would never happen.

21 CHAIRMAN COWGER: So, you didn't know until you
22 got the signed supplemental agreement back, right?

23 MR. WINSBRO: Right.

24 CHAIRMAN COWGER: Which was after you had begun
25 work?

1 MR. WINSBRO: We had been told that time would
2 restart on February 14. DOT didn't sign the
3 supplemental agreement until February 18, and we didn't
4 receive it until February 22.

5 CHAIRMAN COWGER: I apologize. I let you skip
6 too deep into that. Let's go on.

7 MR. WINSBRO: Okay. TSC resumed work on
8 February 14, 1994, at the direction of DOT. There's a
9 letter there in the back to that effect, the letter of
10 January 6th. The executed SA was signed by DOT on
11 February 18th, the next page is a copy of that. If you
12 fold it out, this is the original where Mr. Hubbard
13 signed it.

14 The second is -- shows the DOT signature, dated
15 2-18. TSC responded to the contract urgency by
16 assigning six to eight crews, depending on which week
17 you look at, six to eight crews to the work in order to
18 attempt to meet the completion date.

19 The work was completed on April 15th and a
20 partial punch list was issued to TSC on April 14.
21 Complete punch list was not issued until my letter of
22 May 17.

23 Let me back up a minute. I've got an error in my
24 notes here. It actually says that partial punch list
25 was issued on February 14. That should be April 14, a

1 day before the last work date.

2 CHAIRMAN COWGER: Where is that again?

3 MR. WINSBRO: That's next to the last line on the
4 front page.

5 CHAIRMAN COWGER: Instead of February it should
6 be April?

7 MR. WINSBRO: Should be April 14.

8 CHAIRMAN COWGER: Got you.

9 MR. WINSBRO: The next page my letter of May 17
10 to Mr. Lytle. We had met on the job site to discuss
11 the punch list. At that point we had still not gotten
12 a full, complete punch list. We had only received a
13 punch list on half of the job.

14 The next letter shows that the job was accepted
15 on May 19, two days after we received the full punch
16 list.

17 The final contract value was \$174,416.26. With
18 the supplemental agreement and pay item overruns, the
19 contract value increased by \$46,338.06.

20 According to Section 8-7.3.1 of the Standard
21 Specifications for Road and Bridge Construction,
22 contract time will be increased by the proportional
23 amount that the value increased over the original
24 value.

25 CHAIRMAN COWGER: May I interrupt at this point.

1 Particular instructions to DOT and to the contractor,
2 we've heard all we need to hear about Section 8-7.3.1.
3 The Board can read.

4 It's been clearly established, I believe, that
5 the Gray Book did not apply to this contract, so --

6 MR. HUBBARD: Did not apply you say?

7 CHAIRMAN COWGER: Did not apply. You don't
8 agree?

9 MR. HUBBARD: No, we don't agree.

10 CHAIRMAN COWGER: It sure looks like there's been
11 no evidence that has been submitted to show that it
12 does. The Board can deal with that issue. Whether or
13 not that's pertinent to the claim we can deal with
14 that. Very well we could, and I emphasize could
15 decide, that additional days were due to the overrun
16 even in the absence of Section 8-7.3.1.

17 We will deal with that, so let's not spend any
18 more time on that issue. Do the Board members agree?
19 Okay.

20 MR. WINSBRO: I will quickly go through Exhibits
21 A, B and C. Exhibit A is -- represents \$6,243.89.
22 That is originally the DOT had calculated 38 days of
23 liquidated damages.

24 In a meeting I pointed out to them by means of
25 the calendar that I've got attached to the very back of

1 the book that their calculation was incorrect, that
2 only 35 days were involved.

3 DOT has never paid us for those three extra days.
4 So, the payment for that plus interest is requested.

5 CHAIRMAN COWGER: Are you going to "F" now? Is
6 that the next one?

7 MR. WINSBRO: Yes.

8 CHAIRMAN COWGER: Before we go on, in the
9 interest of time, again, DOT, is there a dispute about
10 those three days? Do you still agree that he's due the
11 three days and he just hasn't been relieved of them
12 yet?

13 MR. NAWAB: In my letter I submitted to you
14 I addressed the issue. I will read it out so they will
15 have the benefit of it.

16 It says, "The value of this claim under Exhibit A
17 will be valid provided the assessment based on 38
18 calendar days by DOT is valid."

19 In other words, we did give three days and we cut
20 down our assessment, liquidated damages based on 35
21 days.

22 CHAIRMAN COWGER: You don't dispute the three
23 days?

24 MR. NAWAB: I don't disagree with his
25 mathematical calculations, his number of days, or

1 anything like that. But if he wants three days, we
2 should be asking for 38 days instead of 35 days.

3 MR. BURLESON: So, he did disappear.

4 MR. NAWAB: To put it that way, I'm saying
5 I disagree.

6 MR. BURLESON: You are saying it's 35 days, just
7 calculated, if they don't give you a thing, the worst
8 it can be is 35 days; and he's saying it's 38 days.

9 MR. WINSBRO: I say it is 35 days.

10 MR. BURLESON: Is this something you can count?

11 MR. WINSBRO: Yes. That's why I provided the
12 calendar to graphically show.

13 CHAIRMAN COWGER: What is the basis of the three
14 days? I think that will get down to the root of it.

15 MR. NAWAB: Sir, in some way we did agree to give
16 him three days. Somewhere down the road you will find
17 that out.

18 My point is if we have to give him \$6300, then we
19 should be able to go back and assess our damages based
20 on 38 calendar days. It's kind of a give and take.

21 CHAIRMAN COWGER: I'm not sure I understand that,
22 but I think we have heard all we need to hear on it,
23 too. What was the basis for granting three more days?

24 MR. NAWAB: Weather conditions. We don't
25 disagree with that.

1 CHAIRMAN COWGER: Okay.

2 MR. WINSBRO: We would like to say there was also
3 a miscalculation of -- we received a letter from DOT
4 when time was suspended that said 55 days remained on
5 the contract when, in fact, 56 days remained on the
6 contract.

7 CHAIRMAN COWGER: Come on, now.

8 MR. WINSBRO: All I'm saying is there was a
9 miscalculation in there.

10 CHAIRMAN COWGER: We don't want to hear any more
11 about that either.

12 MR. WINSBRO: Okay, on "F" from Exhibit B, the
13 time extension for 33 days is based on the original
14 contract value divided by 90 contract days. It gives
15 you a value of \$1,423.09 per contract day. The final
16 contract value of \$174,416.26 divided by the average
17 contract value per day. Let me back up.

18 CHAIRMAN COWGER: Let me say this. The Board can
19 read. We will read Exhibit B. We will deal with what
20 you have submitted.

21 MR. WINSBRO: Okay.

22 CHAIRMAN COWGER: As I understand it, you've got
23 a calculation sheet in here showing how you arrived at
24 the 33 days. You've also got a calculation sheet in
25 here indicating how you arrived at the interest due.

1 MR. WINSBRO: Okay.

2 CHAIRMAN COWGER: I think we understand how you
3 arrived at the 33 days and the interest. Is there
4 anything further to be said, though, about -- I guess
5 not, really, because you are saying this is strictly
6 based on the fact that the dollar amount of the work
7 overran?

8 MR. WINSBRO: Right.

9 CHAIRMAN COWGER: Go ahead.

10 MR. WINSBRO: Exhibit C addresses the different
11 nature of the work to install conduit and wire between
12 the pull boxes and the poles, and to be paid under the
13 pay item that's for open roadway trenching is not quite
14 even as far as the labor. It takes a lot more labor to
15 install those.

16 We are asking for 31 days based on that extra
17 work. There were 165 pole locations that had to be
18 tied in, and we are asking for a total of 31 days for
19 that.

20 Exhibit D and E, we decided we would not discuss
21 any further.

22 In conclusion, TSC agrees that the work did not
23 start on day one of the contract, but liquidated
24 damages are not assessed for a late start but for late
25 completion.

1 The punch list should not be withheld from a
2 contractor if liquidated damages are being assessed.
3 It is our contention that no liquidated damages are
4 warranted in this case due to the contract overrun and
5 the extra work required.

6 CHAIRMAN COWGER: Is that it?

7 MR. WINSBRO: Yes.

8 CHAIRMAN COWGER: Before DOT starts, in the
9 interest of trying to expedite things a little bit,
10 I have a point that I want to make, to make sure that
11 I'm saying this properly.

12 According to the records, the contract time
13 expired April 8. The contractor's position is that all
14 work except the punch list items were completed on
15 April 14. Am I correct up to this point as to the
16 dates?

17 MR. WINSBRO: Yes, sir.

18 CHAIRMAN COWGER: We will let DOT come back and
19 discuss the ramifications of this in a moment.

20 Then the contract time continued to run for
21 approximately another month. It appears like the only
22 work remaining to be done after April 14, the day
23 established by the contractor, all work being
24 substantially completed, is punch list work. Is that
25 true? Do we agree?

1 MR. ELLIS: No. The punch list was issued on the
2 14th.

3 MR. NAWAB: Substantial completion --

4 MR. ELLIS: There was original work that needed
5 to be done.

6 CHAIRMAN COWGER: Original work as opposed to
7 correctible work?

8 MR. ELLIS: Yes, sir.

9 CHAIRMAN COWGER: I thought we could simplify
10 things, but maybe I have complicated things.

11 MR. NAWAB: Let me introduce Mike Ellis, who is
12 an inspector in the field, who is out there on the job
13 every day. Dan White is the project engineer who deals
14 with the paperwork. Mike Lytle is the contracts
15 engineer who works with Dan White.

16 Our assistant resident engineer is no longer with
17 us, and I'm filling in that spot. Mr. Grimsley, who is
18 our maintenance engineer, could not make it because he
19 is sick.

20 Some of the details we will be referencing to
21 different parties. If you will let me refer it to
22 proper authorities, I will appreciate that opportunity,
23 sir.

24 CHAIRMAN COWGER: If you will go ahead and
25 proceed with your rebuttal.

1 MR. NAWAB: I'm going to read this because he
2 doesn't have a copy. It's a very simplified version.
3 It's A, B, C, D. When I say Exhibit A -- I just said
4 that.

5 In Exhibit B I'm not going to repeat it because
6 you told me not to. It pertains to the Section
7 8-7.3.1, Standard Specifications.

8 The Exhibit C, the value of Exhibit C is zero
9 because this has no basis at all other than to offset
10 the so-called remaining balances, because we did not
11 see any justification for them to come up with numbers
12 for remaining balances as conceived by the TSC. This
13 claim is arbitrary and subjective in nature.

14 Exhibit D, the value of this exhibit is zero
15 because no one in the corporation for profit makes the
16 same salary, including fringes and perks, as the CEO.
17 There is no breakdown of the salary for the three
18 personnel.

19 The Exhibit E, which is cost of the arbitration,
20 we will leave it to the Arbitration Board to decide and
21 we will respect and honor your decision, sir.

22 Exhibit F, FDOT does not agree with the
23 additional time requirement based on the increased
24 contract value. Again, I don't want to repeat myself
25 because it's going back to the Standard Specifications

1 on this issue. Does not agree with the additional time
2 due to the pole.

3 We also don't agree to an additional time due to
4 pole time because TSC was reimbursed at the rate of \$22
5 per location. This amount includes as just
6 compensation for time, labor and material.

7 The Exhibit G, FDOT does not agree with the time
8 adjustment. Here again I will reference to the
9 Standard Specifications. FDOT is in agreement with the
10 fact that these documents that were submitted by TSC
11 did take place in the life of this contract.

12 There are additional documents that exist which
13 may or may not pertain, therefore, we did not discuss
14 that.

15 However, there is a letter dated July 27th, which
16 was -- which shows FDOT's sincere effort to compromise,
17 negotiate and offer a just relief to the contractor
18 after prior negotiations with the meeting held earlier,
19 we felt -- without any additional cost to the taxpayer
20 because we all are taxpayers in this room.

21 As far as the other details that we can -- there
22 are a few things that I found out after talking to
23 Mike, that TSC expressed their inability to utilize the
24 time efficiently. They did not appear to work 34 days.
25 According to him, they refused to do any work the first

1 34 days.

2 The punch lists were ignored initially. When
3 they were worked on, they were worked on erratically
4 and very inefficiently as is very obvious. They could
5 finish the entire contract in 60 days and take 30
6 some-odd days to finish the punch list.

7 The technicians were not knowledgeable as to what
8 they were doing. Mr. Lytle's meeting with one of TSC's
9 representatives regarding the punch list, a comment was
10 made in the field that things are not being done
11 properly.

12 There is apparent lack of communications among
13 the TSC personnel, field versus the office.

14 There is no -- if you go through all the
15 documentation submitted by them, and we used all the
16 documents they gave us, there were no direct and
17 specific requests made for time extensions, despite our
18 repeated reminder that there were 55 or 56 calendar
19 days remaining in the contract.

20 They are all documented by letters. Every time
21 we wrote them a letter we did specify that so many
22 calendar days are remaining in the contract. We
23 addressed the issue of the supplemental agreement.

24 There were no direct and specific requests made
25 in the field. Michael Ellis was directly involved on a

1 daily basis and he never heard that.

2 There was no formal or informal presentations
3 made in writing to our project engineer that they
4 needed additional time or disputed the time we ever --
5 15 days or 90 days or whatever. There was no written
6 expression of dispute on that issue.

7 The punch list times were ignored despite our
8 repeated warnings.

9 So, we feel that DOT acted promptly, properly,
10 fairly, diligently and cooperatively and allowed them
11 to work on times when they were not allowed to work,
12 like on weekends, because maintenance people do not
13 work.

14 I think the bottom line is that they lacked the
15 proper supervision, they lacked the trained technician
16 on this particular job, and deficient use of their
17 time, and the communication not only with their staff,
18 with our staffing in a formal or informal manner, sir.
19 That's our position.

20 Now that -- I have given a summary in the last
21 page. I will read it for the benefit of the
22 contractor, the FDOT's final position, which is this
23 (indicating). I have made reference to various events
24 that have taken place. If you want me to read it,
25 I will, but it's there for anybody to read.

1 CHAIRMAN COWGER: Why don't we locate that in the
2 document.

3 MR. NAWAB: It's page ten, the last page, the
4 summary statement.

5 CHAIRMAN COWGER: Why don't we let the contractor
6 glance at that. It looks like this, right
7 (indicating)?

8 MR. NAWAB: That's correct. It starts with Roman
9 numeral I and goes on to Roman numeral VII.

10 CHAIRMAN COWGER: It will probably save us some
11 time to let the contractor glance through that and look
12 at it. We will give you a minute or two to do that.
13 (Brief pause)

14 CHAIRMAN COWGER: Are you finished?

15 MR. WINSBRO: Yes.

16 CHAIRMAN COWGER: Okay, I don't think then that
17 it's necessary for you to read it. He's had the
18 opportunity to look at it.

19 I believe you did have some questions you wanted
20 to ask of your people, though?

21 MR. NAWAB: Yes. Anybody, Mike, if you want to
22 address some of the issues that were brought up in the
23 field like the job was not completed or the punch list
24 was -- the work that was not completed.

25 CHAIRMAN COWGER: I think the thing we are most

1 interested in hearing as the Board is to what
2 transpired after April 14, the day the contractor says
3 the work was substantially completed. What work other
4 than punch list items was there done, and maybe a
5 little bit about the items on the punch list.

6 MR. ELLIS: On the 15th, the following day, there
7 was some wire added. They added some wire, installed
8 16 pole boxes that needed to be finished up. Number 6,
9 number 2, number 4 wire, the different wire was
10 installed after the boring on the 14th to finish up
11 that. Then they had some tie-ins.

12 On Monday the 18th they started cleaning. Beyond
13 that was the punch list. There were some -- a couple
14 of places in the punch list on the -- most of the
15 problems were the pole boxes were not level with the
16 roadway.

17 There was some missing ground rods that they said
18 they built and it was completed, and it was not
19 completed.

20 The first punch list was issued on the 14th.
21 When they requested the other one, they received the
22 other one the following day of their request.

23 Me and Mr. Lytle had a field meeting with TSC
24 personnel on May 11. At that point we let TSC pick
25 whichever site of the project they wanted to stop at

1 and look at. And so they did.

2 We looked at the first thing. The first thing
3 out of their mouth was the job was not completed, the
4 first thing they looked at. It was not completed on
5 May 11.

6 On the 12th they issued -- they received the rest
7 of both sets of what was finally needed to be done to
8 complete the other punch list that they still had.

9 By the time they got that, they then worked in an
10 efficient manner and by that point on the 19th it was
11 completed. There was some --

12 MR. NAWAB: May I address the Board before we
13 proceed. Sir, he is reading out of his daily
14 inspection reports. This is not just something he
15 prepared.

16 CHAIRMAN COWGER: Okay.

17 MR. ELLIS: The reason why -- the cost overrun is
18 for extra bores is what most of that was, when they had
19 to do extra bores and try to get them across because of
20 the failure of extra bores that were not needed and the
21 cost of concrete to fill the bores that they did.

22 CHAIRMAN COWGER: May I interrupt you a second.
23 Go back and restate that. I'm a little confused as to
24 what you just said about additional bores.

25 MR. ELLIS: Jack and bores under the interstate

1 from one side to the other, had to go across. The
2 original bore they couldn't pull the wire because
3 something was in the middle of the road.

4 When they tried to bore, they made four attempts.
5 Two was jack and bore and one was a flow. Neither of
6 the four bores completed across the road.

7 CHAIRMAN COWGER: What you are saying is this
8 boring that took place later in the contract was in
9 essence to make up for conduit that they had bored
10 under there that wouldn't work?

11 MR. ELLIS: Yes, sir. We paid them for the bores
12 they did attempt and for the filling of concrete.

13 Possibly that -- that took almost a week and a
14 half between bores, all four bores. Then when they
15 went back, they finally went back to the original bore,
16 dug it up in the center, in the median, found the
17 problem, had it done by noon. It was completed at that
18 point.

19 Another problem they had when they were boring,
20 they bored into a waterline. That was another highly
21 costly mistake that was done. They took a ramp out,
22 closed a ramp down for five days.

23 Also, on the --

24 CHAIRMAN COWGER: Was the waterline shown in the
25 plans?

1 MR. ELLIS: No, it was located. It was not shown
2 in the plans. The County located it, and they located
3 it wrong at that point, too.

4 MR. BURLESON: You say it is a costly mistake.
5 Who is it costly for?

6 MR. ELLIS: TSC had to repair the road.

7 MR. BURLESON: TSC?

8 MR. ELLIS: Yes.

9 MR. BURLESON: Even though it was located wrong?

10 MR. ELLIS: At that point -- they called for a
11 candy. I don't know if the candy missed it or who
12 missed it. They did locate it. They didn't know which
13 line it was at that point. Their boring people did it
14 at that point. That's -- really entails the last part
15 of the contract beyond April 15.

16 CHAIRMAN COWGER: All right.

17 MR. DEYO: I have a question. In both the claim
18 and the rebuttal, you each have a letter, July 27,
19 1994, addressing liquidated damages. Is the summation
20 of that the offer to reduce -- well, you had double, to
21 cut it back to 840. And then what was the rationale
22 for cutting that by a third? Anyway, the total offer
23 back to TSC was 20,300?

24 MR. NAWAB: I was there when they had a meeting
25 between Mr. Grimsley and the TSC representative and

1 Mike Lytle and the other engineer who is not here.

2 MR. WHITE: I was there.

3 MR. NAWAB: Dan White was there. We accepted a
4 few poles, one-third of the poles were accepted. We
5 realized there were certain difficulties the contractor
6 had.

7 So, in the spirit of working together, some of
8 these deductions were arbitrary, but we worked out a
9 number that we felt was a fair and just offer, despite
10 what we had there.

11 MR. DEYO: Is the 20,300 tied to any number of
12 days?

13 MR. WHITE: Yes, it will reduce the number of
14 days by the three days and then reduce it by a third,
15 and then reduce it by a half again because we went from
16 double liquidated damages to single. That's where the
17 number is.

18 MR. DEYO: I understand going back to the
19 contract amount for single. That's the \$870 per day.
20 So, then what were the final days? You go from 35 --

21 MR. NAWAB: Do you have our page nine, sir, the
22 last --

23 CHAIRMAN COWGER: Let me see if I can answer
24 that. Did you not just -- since a third of the poles
25 have been --

1 MR. DEYO: There is a method to it that
2 I apparently missed.

3 MR. WHITE: They didn't tie it back to a certain
4 number of days. I explained how we started deducting,
5 tried to give back.

6 MR. DEYO: Deduction, then allowance for a third
7 of the poles completed?

8 MR. NAWAB: That's correct. We changed the 38
9 days to 35 days, and we reduced upon request from
10 double to single liquidated damages, and then there is
11 payment for a third of the poles.

12 If you multiply all of that, which I put down as
13 four, you will be able to come up with the numbers.

14 CHAIRMAN COWGER: I had a question about a
15 statement you made a while ago, though. I think after
16 it was recognized that the project was lagging you
17 allowed the contractor to work on weekends?

18 MR. WHITE: Yes, sir, because our workdays are
19 from Monday through Thursday, and in the contract it is
20 Monday through Thursday.

21 First we started letting them work on Fridays,
22 then we said they could start working on weekends so
23 long as they didn't trench.

24 CHAIRMAN COWGER: I understand that now, but did
25 the contract clearly say they could not work except

1 Monday through Thursday?

2 MR. WHITE: Yes, sir.

3 CHAIRMAN COWGER: That wasn't a DOT policy issue,
4 it was in the contract?

5 Contractor, what do you say about that? It's
6 important we know the answer to that, I think. Do you
7 agree or disagree?

8 MR. WINSBRO: Give me a second to locate that
9 article in the contract.

10 MR. NAWAB: On page 52, the last paragraph says
11 work hour limitations.

12 MR. WINSBRO: Okay. We concur that all work will
13 be performed 7:00 to 5:30 Monday through Thursday. No
14 work is performed on Friday, Saturday, Sundays or State
15 legal holidays unless authorized by the project
16 engineer.

17 So, I will say they had the ability to allow us
18 to work.

19 CHAIRMAN COWGER: That's all I needed to know.
20 One other question. Looking at the supplemental
21 agreement just a minute, I want to make sure
22 I understand now that the last item in that
23 supplemental agreement was routine lighting
24 maintenance. That was an item that existed in the
25 original contract?

1 MR. WINSBRO: No.

2 MR. WHITE: It was not.

3 CHAIRMAN COWGER: It was added. So, what that
4 amounted was the connection between the pull box and
5 the pole basically?

6 MR. WHITE: Yes, sir.

7 MR. WINSBRO: If I could explain that a little
8 further.

9 MR. NAWAB: Page 44.

10 CHAIRMAN COWGER: Certainly.

11 MR. WINSBRO: The connection is actually tying
12 and taping, crimping the wires, that sort of thing. As
13 I stated earlier, the DOT had told us that at each pole
14 there was wire pigtailed in and designated by an orange
15 cone, and that all that needed to be done was set the
16 pull box, pull this wire under the edge of the pull box
17 and tie it into the circuit.

18 CHAIRMAN COWGER: Not the case?

19 MR. WINSBRO: As it turned out, that wire was not
20 pigtailed in, and we had to put the wire from the pull
21 box to the pole as well as the conduit.

22 CHAIRMAN COWGER: All you had really anticipated
23 with the \$22 each was to take the wire and insert it
24 into the pull box and make the connections?

25 MR. WINSBRO: Exactly.

1 CHAIRMAN COWGER: But the cost of that isn't in
2 dispute.

3 MR. WINSBRO: Right.

4 MR. ELLIS: I have a question. When the
5 supplemental was originally sent, I went over several
6 times to TSC and talked to head personnel about this
7 and what it would entail of the ROM.

8 The ROM was to connect the pole as they were
9 trenching. They already had it spliced. They didn't
10 have to tape or splice anything. It was all in the
11 pole boxes. They had to make the splices in the pole
12 boxes. The original intent of the contract was that
13 way. The only difference was they had to put the
14 connectors back in the poles to make the light burn for
15 the fuses.

16 The distance of it was only three feet from the
17 pole boxes to the poles. There was no extra time as
18 the trenching was open, but it was already open. The
19 trench was open. As the trench went by, it already
20 exposed the base of the poles.

21 So, the original intent was when they had to tie
22 the wires in, when they pulled the wires, they had to
23 make the splices at the pole boxes to begin with in
24 order to complete the circuit. When they are making
25 that splicing, they were tying it all into one. It was

1 the same crimp, the same tape, the same splice.

2 CHAIRMAN COWGER: Contractor?

3 MR. WINSBRO: Well, number one, I don't see that
4 trenching by the pole base can expose the base. I mean
5 you can't get a trencher that close to a pole base.

6 The entrance into the pole base was on a face
7 perpendicular to the travel lane rather than parallel
8 to the travel lane. So, there's no way the existing --
9 the trenching for the circuit would expose the pole
10 base. It had to be hand dug between the pull box and
11 the pole.

12 CHAIRMAN COWGER: The pull box was kind of out in
13 front of the pole?

14 MR. WINSBRO: Actually it was on a 45 away from
15 traffic is where they asked for it to be.

16 CHAIRMAN COWGER: The conduit was running
17 parallel to the road?

18 MR. WINSBRO: Right.

19 CHAIRMAN COWGER: And some distance away from the
20 pole, obviously?

21 MR. WINSBRO: Right.

22 CHAIRMAN COWGER: I think we've heard enough on
23 that.

24 MR. WINSBRO: If I could make some comments about
25 some other things that were said by the DOT.

1 CHAIRMAN COWGER: Certainly.

2 MR. WINSBRO: Mr. Nawab mentioned there was
3 reimbursement for the extra work and for the conduit
4 and wire to the pole base. Reimbursement is fine, but
5 it does not give you time to do the work.

6 There was a comment that TSC lacked supervision
7 and staff on the job. TSC, as I stated earlier, had
8 six to eight crews constantly on the job from the time
9 that the time was restarted. My experience in lighting
10 jobs is this was three or four times the amount of
11 manpower normally on a lighting contract.

12 There were some comments made about the work that
13 was performed. After the 14th some pull boxes were
14 installed, some wire was installed. The punch list
15 included pull boxes that were not up to grade. Those
16 had to be raised, lowered. Some of them were broken in
17 that process, had to install new pull boxes.

18 I did not include in my packet all the time
19 sheets for the people throughout that period of time,
20 but I can --

21 CHAIRMAN COWGER: We appreciate you doing that.

22 MR. WINSBRO: I can assure you that we had crews
23 on the job working on the punch list until such point
24 as we were so frustrated in not being able to satisfy
25 the inspector that we met on the job site.

1 Let me also kind of characterize a lot of the
2 punch list items as being improper splice, wire
3 splices, improper taping.

4 I've got to tell you that's a very -- I guess
5 personal opinion has a whole lot to do --

6 CHAIRMAN COWGER: Can I say subjective?

7 MR. WINSBRO: Subjective is a very good word.
8 The quality is very subjective on that type of work.

9 MR. ANTHONY: Let me add on the boring, that was
10 still being completed on or around April 14. Those
11 borings were being attempted because we were unable to
12 locate the existing conduit that was supposed to have
13 been on that job.

14 We chose to, unsuccessfully, chose four times to
15 put a new pipe under the interstate. We were
16 unsuccessful, as Mr. Ellis said.

17 After those unsuccessful attempts, we did dig
18 down approximately eight to ten feet in the median of
19 the interstate, and we did finally locate that existing
20 pipe in the middle, the old existing pipe.

21 We cut that pipe in two and eventually were able
22 to go both directions and utilize the old pipe.

23 CHAIRMAN COWGER: Old pipe meaning one that
24 preexisted this contract?

25 MR. ANTHONY: Yes, sir.

1 CHAIRMAN COWGER: What did the plans show? Did
2 they show you putting conductors through an existing
3 conduit?

4 MR. ANTHONY: I believe they did.

5 MR. ELLIS: Yes, they did.

6 CHAIRMAN COWGER: So, these two locations where
7 you had trouble with the conduit that was under the
8 road were not conduits that you installed earlier in
9 the work but conduits that DOT indicated preexisted?

10 MR. ANTHONY: That's correct.

11 MR. WINSBRO: Yes.

12 CHAIRMAN COWGER: All right. Did DOT ever help
13 you try to find them?

14 MR. ANTHONY: Not to my knowledge. Mike may
15 know.

16 MR. ELLIS: I located that one, the one they --

17 CHAIRMAN COWGER: We are going to try to move
18 toward conclusion of this thing pretty rapidly. DOT,
19 we need to hear you say a little bit, particularly
20 about the punch list and the subjective judgment being
21 made by the inspector.

22 MR. NAWAB: I will pass that on to Mike and
23 David. I just want to address the issue.

24 If there is a change like these guys encountered
25 in that pipe, the conduit problem, that would have been

1 the right time to ask for additional time, sir, and I'm
2 sure we would have initiated a second supplemental
3 agreement granting them some time because that's
4 unforeseen, and I don't think the contractor was
5 proactive in that regard.

6 With that I will pass it on to Mike who will
7 address that situation.

8 MR. ELLIS: On the details of the punch list, the
9 splices, when you pick up a splice and you can squeeze
10 it and the water squirts out of it, that is going to be
11 a problem. It's not taped right, wasn't taped enough.
12 That was the problem when we picked it up and you could
13 actually physically see water come out of the splicing.
14 That was the main problem with the splicing.

15 On the pole boxes that were added on the 15th
16 were additional pole boxes, not the ones that needed to
17 be replaced as of the punch list.

18 MR. BURLESON: They weren't added to the
19 contract, they were ones in the original contract that
20 hadn't been done?

21 MR. ELLIS: They were in the original contract,
22 had not been done.

23 On the thing about the first month of the
24 contract, they only had two crews working the first
25 month of February. Then after that the starting of

1 March is when they started pulling two to three to four
2 to five crews. Mr. White has some of the information
3 on the punch list that he wrote up.

4 MR. WHITE: When we first started this process,
5 we did a time line. We went through our records and we
6 found that from the time they restarted time after the
7 supplemental they didn't work for 11 days. That's just
8 the regular, the usual four-day workweek. They didn't
9 show up at all.

10 And they had 12 more days when they only had one
11 crew out there by the end of the time.

12 CHAIRMAN COWGER: Does that pretty well wrap it
13 up as far as what DOT has to say?

14 MR. NAWAB: Yes, we can wrap it up basically by
15 saying the contractor didn't commence the work as he
16 was supposed to based on the notice to proceed. He did
17 not work proficiently when it came to punch list type
18 of work.

19 And he never, ever questioned directly,
20 indirectly, expressly, specifically any time that we
21 repeatedly reminded him in letters how many days are
22 remaining on contract time, even though we made a
23 mistake in removing that writing of the supplemental
24 agreement 15 days.

25 That was based on our attorney's advice because

1 he looked at it, said it was not an issue, so,
2 therefore, he is not going to process that unless we
3 get something different. That's what we did.

4 Despite all these events taking place, never once
5 do I see that they made a direct, express request for
6 additional time, sir.

7 MR. WINSBRO: If I can just respond.

8 CHAIRMAN COWGER: Sure.

9 MR. WINSBRO: I will refer you to my letter of
10 November 19. I did not come out and say can we have
11 extra contract days. However, I said after time was
12 resumed we would require 90 days to complete the
13 contract.

14 MR. HUBBARD: I would like to add at the
15 termination of this contract things were so heated
16 between the two entities that I don't think anything
17 could have been accomplished.

18 MR. BURLESON: After you wrote your letter with
19 your proposal for the supplemental saying you needed 90
20 days to complete the job, you didn't get -- the next
21 correspondence from the Department was just the
22 correspondence saying you would have 66 more days to do
23 the work?

24 MR. WINSBRO: Right. No refusal, no comments
25 about the extra time request.

1 MR. BURLESON: It was a 90-day job to begin with?

2 MR. WINSBRO: Yes.

3 MR. BURLESON: Did they give you ten extra days?
4 66 and 34 is 100.

5 MR. WINSBRO: No, they didn't give us any extra
6 days. That's one of the many --

7 MR. BURLESON: Am I missing something there?

8 MR. WINSBRO: When they suspended time they said
9 that there were 55 days left. I think they made an
10 error in their letter.

11 MR. NAWAB: It says 56.

12 MR. BURLESON: It says 66 right here.

13 MR. NAWAB: They will have 66 days to complete.
14 The 34 plus 66.

15 MR. BURLESON: That's 100.

16 MR. DEYO: It's 100 days. It's a mistake.

17 MR. BURLESON: Is that just a mistake?

18 MR. NAWAB: Yes, that's a typographical error.

19 CHAIRMAN COWGER: Were you finished then with
20 that, Bob?

21 MR. BURLESON: Yes.

22 MR. NAWAB: That was a typo and I addressed that
23 in my evaluation in the analysis phase of my report.
24 Dates were wrong, and the idea was what we went by is
25 the content of the letter. I think our main thrust was

1 to remind the contractor time and time again how much
2 time is remaining.

3 CHAIRMAN COWGER: Okay. Does either party have
4 anything that they need to say to wrap up? In
5 particular, Mr. Contractor, do you want the opportunity
6 to submit a written response to the rebuttal or not?

7 MR. WINSBRO: Yes, we would.

8 CHAIRMAN COWGER: If that's the case then, we
9 need to have that response in our hands and in the
10 hands of the DOT -- let's not have a misunderstanding,
11 you will communicate that to the DOT.

12 MR. NAWAB: I would like to apologize for the
13 misunderstanding.

14 CHAIRMAN COWGER: Let's make sure it doesn't
15 happen again on the other party's part.

16 MR. NAWAB: It will not happen again.

17 CHAIRMAN COWGER: Anyway, you will send three
18 copies of your rerebuttal to the Board, send one copy
19 to the appropriate person at DOT, and we need that by
20 March 15th.

21 MR. WINSBRO: Would that be you, Mr. Nawab?

22 MR. NAWAB: Yes.

23 CHAIRMAN COWGER: And DOT, if you want to make a
24 response.

25 MR. NAWAB: After receiving this?

1 CHAIRMAN COWGER: Yes. We will give you until
2 April 1. In either case, if we don't hear by those two
3 deadline dates, we will assume there was no response or
4 no submittal.

5 MR. NAWAB: That will be like three copies to the
6 Board and one to the contractor?

7 CHAIRMAN COWGER: Yes.

8 MR. NAWAB: We won't miss it this time, sir.
9 It's our first experience with --

10 CHAIRMAN COWGER: I wasn't trying to be critical
11 of you, I just want to make sure we have it straight
12 what happened.

13 MR. NAWAB: We want to thank you for this
14 opportunity to present our case to you.

15 CHAIRMAN COWGER: Is there anything that either
16 of the Board members have? Any questions?

17 MR. DEYO: No.

18 CHAIRMAN COWGER: The hearing is hereby closed.
19 The Board will meet to deliberate on this claim in
20 approximately six weeks. You will have our final order
21 shortly thereafter.

22 MR. WINSBRO: Thank you.

23 (Whereupon, the hearing was concluded at 11:25 a.m.)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA)

COUNTY OF LEON)

I, CATHERINE WILKINSON, Court Reporter, do hereby
certify that I was authorized to and did stenographically
report the foregoing proceedings; and that the transcript is
a true record of the testimony given.

I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel of any of the parties, nor am I a
relative or employee of any of the parties' attorney or
counsel in connection with the action, nor am I financially
interested in the action.

Dated this 11th day of March, 1996.



CATHERINE WILKINSON
CSR, CP
Post Office Box 13461
Tallahassee, Florida 32317