

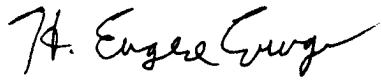
STATE ARBITRATION BOARD

1022 LOTHIAN DRIVE
TALLAHASSEE, FL 32312-2837

PHONE: (904) 385-2852 OR (904) 942-0781 FAX: (904) 942-5632

NOTICE

In the case of Misener Marine Construction, Inc.---f/u/b PDM Bridge Corp. versus the Florida Department of Transportation on Project Nos. 87006-3502 & 87006-3508 in Dade County, Florida, both parties are advised that State Arbitration Board Order No. 6-98 has been properly filed on September 14, 1998.


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

S.A.B. CLERK
SEP 14 1998
FILED

Copies of Order & Transcript to:
Greg Xanders, P.E., Director of Construction/FDOT

Frederick J. Springer, Attorney/Vezina, Lawrence & Piscitelli, P.A.

STATE ARBITRATION BOARD

ORDER NO. 6-98

RE:

Request for Arbitration by
Misener Marine Construction, Inc.--- f/u/b PDM Bridge Corp. on
Job Nos. 87006-3502 and 87006-3508--Bricknell Ave. Bridge in
Dade 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
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 11:00 a.m. on Friday, July 31, 1998.

The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 6-98 in this cause..

ORDER

The Contractor presented a request for arbitration of a claim in the total amount of \$86,697.76 plus interest at the rate of 10% per annum in the amount of \$17,339.55 for the period between 1/1/96 and 12/31/97, The total claim is \$104,037.31. The claim is based on an alleged misinterpretation by the Department of Transportation of the contract provisions covering adjustment of the contract Lump Sum Price for structural steel items when there is an error in the plan quantity for those items. The Contractor claims that Lump Sum Bid Amounts for these items are to be adjusted to reflect a significant error in the quantities shown in the plans as estimated weights of structural steel. (Plan Sheet No. B-6)

The dispute from which this claim arises is over the method of measurement used in determining the plan quantity for the items Structural Steel (Bascule Leaves) and Structural Steel (Bascule Piers).

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

1. The weight of structural steel furnished, as calculated in accordance with a correct interpretation of the contract provisions, exceeded the estimated weights shown in the plans by 120,025 pounds. (Bascule 80,156# --- Pier Steel 39,869#) In accordance with Subarticles 9-3.2.1 and 9-3.3.1 of the Standard Specifications the Lump Sum amounts for the items Structural Steel (Bascule Leaves) and Structural Steel (Bascule Piers) should be adjusted proportionally.
2. The Method of Measurement for Structural Steel Weights, as set out in Subarticle 460-38-3.2 of the Standard Specifications, provides that the weights of plates shall be computed on the basis of the nominal weights as given in the manufacturer's handbooks, using the dimensions shown in the plans. It is standard industry practice to use the American Institute of Steel Construction (AISC) Manual as the "manufacturer's handbook". This Manual provides that the weight of plates and bars is calculated using the detailed overall rectangular dimensions, except that when parts can be economically cut in multiples from material of larger dimensions the weight is calculated on the basis of the theoretical rectangular dimensions of the material from which the parts are cut. The Bill of Materials furnished by the steel fabricator is based on the rectangular dimensions of the smallest plates or bars from which the final pieces could be cut. Allowance was made for the oversize of plates required for squaring and camber allowance i.e.: Our fabricator did not use the overall lengths of plates in their calculations. The quantity of material purchased to fabricate the bridge units was in the range of 7% to 12% above the amount shown on the fabricator's Bill of Materials.
3. In calculating the plan quantities and in verifying the final quantities for the Structural Steel items, DOT used the neat dimensions of plates and bars as shown in the contract plans. They treated the portions of plates and bars cut away to achieve plan dimensions as waste or convenience to the fabricator.
4. We recognize that wording contained in an earlier version of Subarticle 460-38.3.2, stating that the method of calculating weights of structural steel was essentially the same as contained in the AISC Manual, did not appear in the version of Subarticle 460-38.3.2 applicable to this project. However, a reference to the AISC Handbook remains in Subarticle 460-38.3.2. Our position is that, in the absence of specific wording to the contrary, the contract should be interpreted in light of custom or trade usage i.e. the AISC Handbook.
5. In preparing our bid, we recognized that the plan quantities were incorrect but, due to the short time available in the bidding process, it was not feasible to resolve this with DOT prior to submitting our bid. In attempting to be low bidder, we factored the total cost of structural steel fabrication over what we considered to be the correct quantities of the items for Structural Steel (Bascule Leaves) and Structural Steel (Bascule Piers) and multiplied these "unit prices" by the plan quantities for the items. We anticipated that DOT would adjust the Lump Sum amount proportionally as we described earlier.

6. DOT determined that there was in fact an error in their calculation of structural steel weights using their interpretation of how to compute weights and issued a Supplemental Agreement increasing the lump sum payments for Structural Steel items by \$42,656.00.

7. We are claiming additional compensation in the amount of \$129,353.76 less the amount of \$42,656.00 we received under the Supplemental Agreement plus interest at 10% per annum for the period between 1/1/96 and 12/31/97 (\$17,339.55).

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

1. Subarticle 460- 38.3.2 of the 1991 Standard Specifications, which was the version applicable to this job, states that Structural Steel weights are to be computed on the basis of the dimensions shown in the plans. The first sentence in the Calculation of Weights section in the AISC Code of Standard Practice (See Exhibit No. 3) says: "Unless otherwise set forth in the contract....." The contract set forth that calculation of weights is to be based on plan dimensions. The reference in Subarticle 460-38.3.2 to "manufacturers' handbooks" is for determining nominal weights. Subarticle 460-38.1 states: "The quantity of structural steel entering into and becoming a part of the completed structureshall be paid for by the plan quantity in pounds....."
2. The wording in Subarticle 460-38.3.2 of the 1986 version of the Standard Specifications which dealt with use of rectangular dimensions and over-all lengths to calculate weights of Structural Steel is not contained in 1991 Standard Specifications.
3. DOT recognized that there was an error in the estimated plan weights of Structural Steel calculated per the applicable specifications and we issued a Supplemental Agreement to adjust payment under the two Lump Sum items. This amounted to payment for an additional 40,000# of Structural Steel (38,000# Structural Steel (Bascule Leaves) ---2,000# Structural Steel (Piers)).
4. The Contractor has claimed additional compensation for Structural Steel based on an erroneous interpretation of Subarticle 460-38.3.2. The portions of a plate between the raw plate dimension and the actual dimension of the fabricated plate, as shown in the plans, is waste. Thus, the Contractor's claim for payment for approximately 80,000# of additional Structural Steel is not valid.

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

1. On more recent DOT projects, the plans contain a note stating that the plan weights for Structural Steel items are for information only. The intent of this note is to clarify that the Lump Sum items for Structural Steel will now not be adjusted because of an Error in Plan Quantity

2. The phrase "computed.....using the dimensions shown in the plans." in the 1991 version of Subarticle 460-38.3.2 does not differ from corresponding phrase contained in the 1986 version of that Subarticle.

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 \$ 40,000 for his claim.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$241.40 for Court Reporting Costs.

S.A.B. CLERK

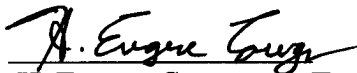
SEP 14 1998


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Tallahassee, Florida

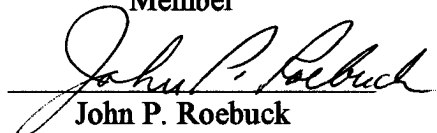
Dated: 9/14/98

Certified Copy:


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


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


Bill Deyo, P.E.
Member


John P. Roebuck
Member

14 September 1998

DATE

STATE ARBITRATION BOARD
STATE OF FLORIDA

CLERK
SEP 14 1998
FILED

MISENER MARINE CONSTRUCTION,)
INC.)

) PROJECT NO. 87006-3502,
) 3508

- and -)

) LOCATION: Dade County,
) Florida

DEPARTMENT OF TRANSPORTATION)
_____)

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Friday, July 31, 1998

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

TIME: Commenced at 11:25 a.m.
Concluded at 12:30 p.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
(850) 224-0127

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman
 Mr. Jack Roebuck
 Mr. Bill Deyo

(No Appearance On Behalf Of Misener Marine
 Construction, Inc.)

APPEARING ON BEHALF OF VINCENNES STEEL CORPORATION:

Mr. Frank Tourn
 Mr. Larry Welsh

Fred Springer, Esquire
 Vezina, Lawrence & Piscitelli
 318 North Calhoun Street
 Tallahassee, Florida 32301

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Clark Williams
 Mr. Gus Graupera
 Mr. Mark Croft
 Mr. Evelio Hernandez

* * *

I N D E X

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P R O C E E D I N G S

1
2 CHAIRMAN COWGER: This is a hearing of the State
3 Arbitration Board established in accordance with
4 Section 337.185 of the Florida Statutes.

5 Mr. Bill Deyo was appointed as a member of the
6 Board by the Secretary of the Department of
7 Transportation.

8 Mr. John Roebuck was elected by the construction
9 companies under contract to the Department of
10 Transportation.

11 These two members chose me, H. Eugene Cowger, to
12 serve as the third member of the Board and as the
13 Chairman.

14 Our terms began July 1, 1997 and expire June 30,
15 1999.

16 Will the persons who will make oral presentations
17 during the hearing please raise your right hand and be
18 sworn in.

19 (Whereupon, all witnesses were duly sworn.)

20 CHAIRMAN COWGER: The documents which put this
21 arbitration hearing into being are hereby introduced as
22 Exhibit 1. That is the request for arbitration that
23 the contractor submitted and all of the attachments
24 thereto, which are in a package.

25 We will also introduce as Exhibit No. 2 a

1 rebuttal package submitted by DOT District 6.

2 Does either party have any other information it
3 wishes to put into the record as an exhibit? Hearing
4 nothing, does either party -- well, since there are no
5 additional exhibits to be presented I will skip that
6 question.

7 (Whereupon, Exhibit Nos. 1 and 2 were received in
8 evidence.)

9 CHAIRMAN COWGER: During this hearing the parties
10 may offer such evidence and testimony as is pertinent
11 and material to the controversy and shall produce such
12 additional evidence as the Board may deem necessary to
13 an understanding and determination of the matter before
14 it.

15 The Board shall be the sole judge of the
16 relevance and materiality of the evidence offered.

17 The parties are requested to be sure that you
18 have a copy of properly identified exhibits because we
19 will not supply those to the parties when we send you
20 the final transcript. The transcript will be sent to
21 you with our final order, but we will not furnish you
22 any exhibits.

23 This hearing will be conducted in an informal
24 manner. First the contractor's representative will
25 elaborate on their claim, and then the Department of

1 Transportation will offer rebuttal.

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

6 We are ready for the contractor to begin his
7 presentation. Before we do that, I have one -- two
8 statements.

9 First off, we note that the contractor has an
10 attorney here. DOT, do you have any problem with that
11 as far as prior notice or anything?

12 MR. CROFT: No.

13 CHAIRMAN COWGER: All right. The answer was no.

14 The other thing, it's pretty clear to the Board
15 in looking at the exhibits that were presented that
16 really this dispute boils down to one issue, and that's
17 interpretation of Article 460-38.3 of the Standard
18 Specifications, which deals with how to calculate the
19 quantity of steel to be paid for under a plan
20 quantity -- under a lump-sum item.

21 It seems to me that we can expedite this thing
22 for everybody if we can try to stay focused on that one
23 issue and not introduce any more information that's not
24 totally pertinent during the course of this hearing.

25 It's not intended to restrict anything that

1 anybody says, I'm just trying to keep the thing focused
2 so we don't spend a lot of time rambling around if we
3 can help it.

4 When it comes your turn to speak, if either party
5 has any problem with that, let us know. Let me know.

6 Okay, we are ready for the contractor to present
7 his side of the issue.

8 MR. SPRINGER: Do you have a time limitation?

9 CHAIRMAN COWGER: We are going to try to get it
10 done in an hour if we can.

11 MR. SPRINGER: I might take five minutes.

12 Mr. Welsh will take the remainder of the time, if we
13 can reserve a few minutes to any rebuttal to the
14 Department's case.

15 What I want to do is just make two legal
16 principles known without overformalizing this matter,
17 and I think, Gene, correctly, I have hard copies of
18 these if you can't see them, identified the issue,
19 which is how much additional compensation, if any, is
20 due Sheffield for the 120,000 pound overrun of the
21 structural steel.

22 And the Department has denied the claim
23 compensation on what we think is a mistaken assumption
24 that, quote, Sheffield used rectangular dimensions and
25 ordered overall lengths to compute pay weights

1 submitted.

2 We think the evidence will be that Sheffield did
3 not use ordered overall lengths to compute the pay
4 weights. Sheffield used the fabricated shop drawing
5 weights, and the Department has never analyzed or
6 disputed those weight calculations, but came up with
7 the theoretical waste or convenience amount for which
8 it says Sheffield is not due compensation.

9 We think that approach is contrary to the
10 Standard Specifications and industry practice.

11 What is not at issue is that there was a plan
12 error in the plan quantity for the structural steel.
13 This is from the Department's rebuttal. That it was
14 substantially an error as defined in standard spec 9-3.

15 That KSA, the Department's agent, the original
16 designer, its review of the pay weight calculations,
17 which is tab -- the last tab in DOT's rebuttal, was
18 limited to selected checks. KSA did not undertake any
19 detailed review.

20 KSA's conclusion was that the contractor's pay
21 weight summary does appear to be representative of the
22 work produced, and that no major items were included
23 that should not be included.

24 KSA did discover a \$20,000 mistake in the
25 Department's favor, 37,000 pounds of steel under the

1 pay item, and it should have been in the other one.

2 KSA's opinion is that the contractor is
3 technically correct in his assessment, and KSA's
4 opinion with respect to the contractor's method of
5 computing the extra compensation, KSA finds it to be
6 more equitable to the Department than that proposed on
7 27th Avenue.

8 There is another project referred to in KSA's
9 review on 27th Avenue that was not included in the
10 rebuttal package. We don't know exactly what the
11 issues were there or what the Department did.

12 Gene says really the focus is on the
13 interpretation of the specification 460-38.3.2. The
14 Department's position is that Sheffield's claim is
15 based on the 1986 specification, and that under the
16 1991 specification no compensation is due.

17 There they are compared to one another. The
18 first sentence is exactly the same, and that's shown at
19 the top there with some unnecessary language
20 eliminated, but it's shown under each one, which is
21 that weight shall be computed on the basis of nominal
22 weights as given in the manufacturer's handbooks, using
23 the dimensions shown in the plans.

24 What was eliminated between the two, the 1986 and
25 '91 is from here to here (indicating), that second

1 sentence. We don't think the elimination of that
2 sentence supports the Department's position.

3 The manufacturer's handbooks that are referred to
4 expressly in both the 1986 and the 1991 spec is the
5 American Institute of Steel Construction Manual of
6 Steel Construction. There is a copy of it here. If
7 the Board wants us to submit this into evidence, we
8 will. It's 9.2.

9 Mr. Welsh can explain how this manufacturer's
10 handbook provision was used in Sheffield's calculation
11 of the weights.

12 We think that by expressly incorporating this
13 into the contract, this controls, and even if it
14 weren't expressly incorporated, this is the industry
15 standard.

16 CHAIRMAN COWGER: May I interrupt you a minute
17 and ask you a couple of questions about that. You
18 said it was incorporated into the contract? You don't
19 need to get into great detail, but is that the
20 preceding --

21 MR. ROEBUCK: Heading.

22 MR. SPRINGER: This is in both the 1986 and 1991.

23 CHAIRMAN COWGER: The manufacturer's handbook is
24 what you are referring to?

25 MR. SPRINGER: Yes.

1 CHAIRMAN COWGER: The other question is we would
2 like to have a copy of that information, AISC handbook.
3 We will introduce that at this point as Exhibit 4.

4 DOT, do you have any objection to that?

5 MR. CROFT: No, we would like a copy, too.

6 CHAIRMAN COWGER: Everybody mark it as Exhibit 4
7 if they will, please.

8 MR. SPRINGER: Four or three?

9 CHAIRMAN COWGER: It's 3 on this job. Sorry.
10 (Whereupon, Exhibit No. 3 was received in evidence.)

11 MR. SPRINGER: The reason we think that is
12 important is because of the two legal principles that
13 I would like to express, and that is that this is
14 the -- realizing we are not in court, this is the U.S.
15 Supreme Court over a hundred years ago, "Parties who
16 contract on a subject matter concerning which known
17 usages prevail, incorporate such usages into their
18 agreement if nothing is said to the contrary."

19 The evidence will be that some states do say to
20 the contrary. We are not going to follow the AISC
21 code. Mississippi, for example, details how it is
22 going to depart from trade practice.

23 These are just some other examples of the Federal
24 Board of Contract Appeals in a Federal DOT case. The
25 parties draw their agreement in light of the trade,

1 customs and practices of the relevant business
2 community, which in this case we think are expressed in
3 the AISC code.

4 And then just as an example from Florida law,
5 "Commercial transactions and contracts are interpreted
6 in light of customs and trade usage."

7 To the extent that there's any ambiguity in the
8 contract, we want to submit that these principles
9 apply, which has a Latin name that I won't attempt to
10 mispronounce, but that essentially ambiguous contract
11 language is construed against the interest of the party
12 that drafted it.

13 If there is an ambiguous document, the party who
14 drafted it can't claim the benefit of it. The reason
15 for the rule, according to the U.S. Supreme Court, is
16 to protect the party who did not choose the language
17 from an unintended or unfair result.

18 The Federal circuit case in the middle there says
19 the same thing. That rule applies to the government,
20 in this case DOT as well as the private parties
21 (indicating).

22 This last bit here is the restatement of
23 contracts. That explains more the rationale of the
24 rule. The party who writes the contract is more likely
25 to provide for protection of his own interests. He's

1 more likely than the other party to have reason to know
2 of uncertainties of meaning.

3 He may leave the meaning deliberately obscure,
4 intending to decide at a later date which meaning to
5 assert.

6 So, in cases of doubt, there is substantial
7 reason for furthering the meaning advanced by the party
8 who didn't draft it. In this case we think that the
9 evidence will be that if it's ambiguous the DOT should
10 have known that it has been applied inconsistently --
11 well, except for this case, it's been applied
12 consistently in other districts as interpretation of
13 that spec and how pay rates should be computed.

14 Now, Mr. Welsh will get into the factual part.

15 CHAIRMAN COWGER: Before we go to Mr. Welsh,
16 because of the fact that the DOT has not seen this
17 summary of legal principles you just put up, we would
18 like to identify those as Exhibits 4 and 5.

19 At this point, DOT, since you did not have an
20 attorney here, and if you want to, strictly up to you,
21 if you want to submit a statement subsequent to the
22 hearing to the Board on these legal opinions that have
23 been presented, you are welcome to do so, provided that
24 the Board receives that by no later than August 20th.

25 And if you do furnish something like that to us,

1 we would like for you to furnish a copy to each Board
2 member and at the same time furnish a copy to the
3 contractor.

4 It's strictly up to you. I think in the interest
5 of fairness we will give you that opportunity.

6 MR. CROFT: I would like the opportunity.

7 CHAIRMAN COWGER: Frankly, I think the Board
8 understands this. I think everybody is pretty familiar
9 with these principles. I wouldn't spend a lot of time
10 on it for me.

11 MR. SPRINGER: These are the trade practices
12 summary and 5 will be the rule of contra proferentum.
13 (Whereupon, Exhibit Nos. 4 and 5 were received in
14 evidence.)

15 CHAIRMAN COWGER: Do you have enough of those to
16 go around?

17 MR. SPRINGER: Yes.

18 MR. WELSH: Anything that goes to the contractor
19 needs to go to the law firm. I don't know if we said
20 that before.

21 CHAIRMAN COWGER: How about furnishing it to
22 them. We will put that responsibility fully on the
23 DOT. You all have their address and all from some of
24 the correspondence. So, it would expedite things, DOT,
25 if you would send any rebuttal to both of them.

1 Okay. I believe we are ready to go into the
2 factual part of this thing, correct?

3 MR. SPRINGER: Yes, sir.

4 CHAIRMAN COWGER: Okay.

5 MR. WELSH: The bottom line on the weighing of
6 steel is that the DOT has never done it the way they
7 want to do it on this particular project before, in my
8 experience. And I've been involved in bridges from
9 1966 through 1974 in Florida, and then back again in
10 1983 to the present day.

11 The only state that we've done business with that
12 deducts for holes and copes and clips and any other
13 thing that comes along to get the actual net shipping
14 weight or net net weight that I'm aware of is
15 Mississippi. They deduct for bolt holes and everything
16 else.

17 We've had two projects that were fabricated after
18 Brickell, New Smyrna and Chris McCaula where we had
19 weight adjustments that were based on rectangular
20 dimensions.

21 We had a past project in Orlando, and I don't
22 remember which one it was. It was a unit price job,
23 but the weight at the end was deducted based on the
24 unit price and the rectangular dimensions.

25 When there was a reduction involved from what was

1 originally estimated, the original quantity on the job,
2 the State was perfectly willing to accept rectangular
3 dimensions.

4 We did not weigh up any material that was added
5 for cutting or squaring or anything like that. I don't
6 remember the exact language that DOT used there. Do
7 you remember that, Fred, that ordered overall lengths?

8 Use rectangular dimensions in ordering overall
9 lengths. They keep referring to this as waste or
10 scrap.

11 The widths and lengths of any rectangular or
12 square piece on those drawings was weighed to those
13 exact dimensions, although we would have bought a
14 larger piece of material to cut it from.

15 And the webs of the girders, if the webs are six
16 foot deep, 72 inches deep, and they've got three inches
17 of camber, we have to buy it at 75 inches plus a couple
18 or three inches for trim, which would get it up to 76,
19 77 inches wide, which we would buy. We would buy it
20 three to six inches longer than is required.

21 What is shown and weighed on the shop bill is the
22 net width and the net length, with no adds for that
23 true scrap, we will call it.

24 It is true there are some weights in this project
25 of material that would have not gotten shipped to the

1 job, if it's other than a rectangular or a square
2 shape. The copes, the clips, the odd-ball shape would
3 have been weighed per the rectangular dimension as per
4 the AISC.

5 In lieu of any instructions to the contrary, in
6 the specifications of the buyer as to how weights are
7 calculated when weights have to be calculated for pay
8 quantities, you have to use something.

9 Where do you stop in deducting for copes, clips,
10 odd-ball shapes, holes, openings, facing on a bascule
11 girder, if in the area of the trunnion and the collar
12 we will have to machine or face the web to provide a
13 good flat surface for that collar to go to?

14 If it's a one-inch web -- if it's faced both
15 sides, we may order it one and a quarter inches thick,
16 and we are reducing that dimension in the center.

17 There are projects where you might have a
18 one-inch web and we face the one-inch web. I seriously
19 doubt that weight has been reduced from this one.

20 So, the AISC code of standard practice is a
21 national, international, because it's been used on
22 projects internationally that we deal with, guide to
23 standardize the weighing process.

24 Now, what do you count and what do you weigh for
25 the weight on a project?

1 We did not invoice any added material for cutting
2 and squaring. We did not use overall lengths.

3 I would say, without fear of correction, that the
4 material that we bought to fabricate this project was
5 in the range of 7 to 12 percent above the actual
6 invoice weight. That's the waste of scrap on this job.

7 In addition, as part of this, there were some
8 items that weren't included, such as the bolts.

9 We approached this project the way we approached
10 every other project that's been done for the Florida
11 DOT. We didn't do anything differently than we've done
12 on any other project, whether it be unit price or lump
13 sum.

14 DOT specifications require an adjustment at the
15 end of the project based on actual quantities, whether
16 they go up or down. You have to bid anticipating what
17 is going to actually happen at the end of the job.

18 On the opposite effect of this one, if the DOT
19 said there's a hundred thousand pounds on a job and we
20 make the take-off at bid time and it's 50,000 pounds,
21 we don't dare bid it based on the 50,000 pounds because
22 you're going to take half of our money back at the end
23 of the job when the actual weight comes out less
24 because of the requirement in your specifications.

25 In the absence of any details in the DOT manual

1 as to how to weigh, and in particular in light of the
2 terminology being very similar to what is in the AISC
3 manual, what are we supposed to use to weigh the steel
4 to come up with how we are going to do it other than
5 past experience and the AISC code of standard practice?

6 As I say, we have invoiced it per the DOT specs
7 on two other projects. There was no problem. On the
8 New Smyrna project -- it's in the exhibits, but I'm
9 very safe in saying, I think, that from the time we
10 first submitted until the time we got paid was less
11 than six or seven months for this very same type of
12 thing, only a lot smaller quantity.

13 I think they had a correction for us. We made
14 the corrections. I think there may have been some on
15 this project where we had substituted heavier material
16 and inadvertently weighed it with what we used rather
17 than what was specified.

18 I think that pretty well covers it. Anything you
19 need to remind me of?

20 MR. SPRINGER: You can just wait for rebuttal.

21 CHAIRMAN COWGER: You will have an opportunity
22 again.

23 Before we go to the rebuttal, you mentioned the
24 bolts. Did they include the bolts or not in the final
25 pay quantity, in calculating the --

1 MR. WELSH: In the original estimate they didn't.
2 I believe they did in the final pay quantity. They
3 might be able to address that better than me.

4 CHAIRMAN COWGER: Okay. The other question, I'm
5 still a little bit confused when you use the term true
6 scrap in -- first off, let me ask this. You mentioned
7 weighing these pieces. Do you actually weigh them or
8 do you actually use dimensions and calculate the
9 weight?

10 MR. WELSH: It's calculated.

11 CHAIRMAN COWGER: You don't actually weigh each
12 plate. Okay. That was a little bit confusing to me.

13 You mentioned the New Smyrna job. Do you know
14 which specifications it was bid under?

15 MR. ROEBUCK: '91 or --

16 CHAIRMAN COWGER: The date of the Standard
17 Specification book for that job? What you are trying
18 to do is establish a precedent there as I see it. If
19 it was bid under the '86 specs, then you don't have any
20 precedent.

21 MR. WELSH: I don't specifically -- it doesn't
22 say it in this letter, but this was a project that
23 I believe was bid in 1994, '95. So, it would almost
24 have to be the '91 specs, wouldn't it, Clark?

25 MR. WILLIAMS: Yes.

1 MR. WELSH: I would think so. It's Tab 11 in
2 Exhibit 1. I think that was Exhibit 1.

3 MR. ROEBUCK: You mentioned it in your
4 correspondence that it was rather contemporary with
5 this bid, you have gotten paid on it and you haven't
6 gotten paid on this one.

7 MR. WELSH: Yes, sir.

8 CHAIRMAN COWGER: Sort of looks like it must have
9 been under '91.

10 DOT, you have the opportunity to discuss that if
11 you wish.

12 One other question, talking about true scrap, in
13 calculating the way you all did it, the way Sheffield
14 did it, in calculating the weight of a particular plate
15 that was used in fabricating a girder, I would say, you
16 used the overall dimensions of the plate before you
17 made any cuts on it?

18 Say it was a web plate and you had to cut the
19 bottom half to fit the bottom flange of the girder,
20 your calculations were based on the size of the plate
21 before you made the cut?

22 MR. WELSH: That's --

23 CHAIRMAN COWGER: Isn't that the way AISC does?

24 MR. WELSH: Yes and no. If we have a plate, a
25 web plate, for example, that's flat on the top and

1 curved on the bottom, we would buy a rectangular plate
2 at the deepest dimension to cut it out of. That's what
3 is on the shop bills, that is what is weighed.

4 However, to that width that's shown, because
5 that's the dimension that has to be there to meet the
6 specifications on the job -- if it's a six-foot deep
7 web, that has to be six feet and it tapers out.

8 That six-foot plate we may have bought four to
9 six inches wider for camber and squaring and three to
10 six inches longer, particularly if it's getting full
11 pin weld at both ends to splice into other sections of
12 the web, we would have bought it longer.

13 Those added for cutting, squaring, cambering are
14 not included in these weights.

15 CHAIRMAN COWGER: Got you.

16 MR. WELSH: But the little curve section cut out
17 is.

18 CHAIRMAN COWGER: Okay. We are ready to go to
19 the DOT?

20 MR. ROEBUCK: You spent a lot of time on this
21 method of measuring this plate by 490 pounds. I didn't
22 see that much of an argument that DOT didn't accept it.
23 They accepted your weight disagreement.

24 Does the DOT have a weight, a measuring
25 disagreement in this matter? I mean the weighing, many

1 of your letters, KSA's, all of them, go ahead and
2 assume the 120,000 pound difference.

3 It's just that you applied different unit prices
4 to it than were realistic. You came up with some ideas
5 of this scrap and waste that were quite below unit
6 prices, and came up with offers of 30,000, 60,000.

7 MR. CROFT: Let us present our part.

8 CHAIRMAN COWGER: Address that when you get to
9 it. Let's go on.

10 MR. CROFT: Let me first introduce for your
11 benefit, in case you want to direct questions to
12 particular people, Gus Graupera was the project manager
13 for this job until March of '95. Thereafter he was the
14 resident engineer over the project.

15 Evelio Hernandez took over as project manager at
16 that time through completion of the job.

17 CHAIRMAN COWGER: Are you going to introduce
18 Clark?

19 MR. CROFT: You know Clark. We asked Clark to
20 come as a representative of the State Construction
21 Office because this basically is an interpretation of
22 spec issues. We did go to the State Construction
23 Office and ask the State Construction Engineer to give
24 us an interpretation, which is what we followed.

25 MR. WILLIAMS: I am here representing

1 Charles Goodman who is out of town today, but Charles
2 has been involved in our discussions.

3 MR. CROFT: Basically Fred showed you the two
4 specs. There is noticeable difference between the two.
5 The basic difference is they are still asking to get
6 paid for rectangular shape, and our interpretation of
7 the specs said that is not due. We are paying the plan
8 dimension. We are not deducting for copes, drill
9 holes, that type thing, but we are paying the plan
10 dimensions.

11 He's got, particularly on the girder, which is
12 the main difference, he's got some major, some large
13 triangular sections cut off and circular section at the
14 ends. That's the primary difference.

15 I don't agree with -- Fred presented the industry
16 code. The first sentence of that code says "unless
17 otherwise set forth in the contract."

18 I don't see where that could be brought in unless
19 it is not addressed elsewhere in the contract.

20 Also, 1991 spec, which governs here 460.38, says
21 the weights of rolls, shapes, bars, plates, pipe
22 railings shall be computed on the basis of the nominal
23 weights as given in the manufacturer's handbook.

24 So, that's the only reference I see there to the
25 manufacturer's handbook is the nominal weight.

1 MR. WILLIAMS: Of individual shapes.

2 MR. CROFT: Right, which is the 490 pounds per
3 cubic foot. That -- let me see, I'm going to ask Clark
4 to discuss New Smyrna since it was brought up.

5 I also will mention we have looked at 27th
6 Avenue, which you have mentioned as well. 27th Avenue
7 was the 1986 spec, so there was a large adjustment on
8 that job. It is dealing with a different spec. It
9 doesn't apply.

10 Clark did some research with the District 5 folks
11 in regards to New Smyrna. I will let him speak to
12 that.

13 CHAIRMAN COWGER: Did I hear you say it was a
14 different spec from this job?

15 MR. CROFT: The 27th Avenue was. It was a 1986
16 spec.

17 CHAIRMAN COWGER: That's the one the contractor
18 referred to earlier?

19 MR. CROFT: He displayed both specs on the board.
20 On the New Smyrna, they said it was '91.

21 CHAIRMAN COWGER: This is a different job.

22 MR. WELSH: I think KSA brought it up in one of
23 their letters is how 27th Avenue got into this.

24 MR. WILLIAMS: Our office contacted District 5
25 personnel in regard to the New Smyrna job, which was

1 the '91 spec. There was a supplemental agreement for a
2 little over 6800 pounds of steel for a total cost of
3 \$15,281. But it was found to be a plan error.

4 P. C. Driver and Associates, the engineer of
5 record, reviewed everything at the time that the claim
6 was made, and found that there was a plan error of
7 6,800 and some pounds at the unit cost of \$2.23 per
8 pound, and that became over the amount allowed by the
9 spec as far as it being an actual overrun.

10 So, District 5 did pay for an overrun on New
11 Smyrna, but it was because of an actual plan error.

12 District 5 confirmed to us that they did not pay
13 for waste, that the amount that was paid for was
14 because there was a plan error and, therefore, that
15 they went in accordance with the '91 spec.

16 CHAIRMAN COWGER: Okay, are you through, Clark,
17 for the moment?

18 MR. WILLIAMS: Yes, sir.

19 CHAIRMAN COWGER: Okay, Mark?

20 MR. CROFT: Basically in reference to Jack's
21 question, essentially what I said, the difference in
22 our interpretation of how to calculate the weight is
23 only -- basically those major cut-outs that you want.

24 I don't know what you would term them, large
25 angles or circular sections that were cut out of the

1 main girder, which we feel do not meet the spec, which
2 says we pay by plan dimension. It doesn't say --
3 nowhere in the '91 spec does it mention rectangular
4 shapes.

5 MR. WILLIAMS: Mark, may I note in relation to
6 exactly what you just said, I note one thing that I'm
7 not sure has come up, and that's under 460-38, method
8 of measurement, 1991 spec.

9 Of course anything else I assume is moot, under
10 the '91 spec, 460-38.1, structural steel, method of
11 measurement states, "The quantity of structural steel
12 entering into and becoming a part of the completed
13 structure and accepted by the engineer shall be paid
14 for by the plan quantity in pounds," et cetera.

15 We felt it to be of import, the quote, "entering
16 into and becoming a part of the completed structure."

17 CHAIRMAN COWGER: That phrase you just read,
18 though, is no different than what is stated in the '86
19 specs, right?

20 MR. ROEBUCK: Right.

21 CHAIRMAN COWGER: Just so we've got that
22 straight. There was no change in that part of the spec
23 between '86 and '91.

24 MR. WILLIAMS: That I'm not sure of.

25 CHAIRMAN COWGER: We can compare them and read.

1 I'm almost sure that's right.

2 MR. SPRINGER: That's at Tab 9 of the DOT
3 exhibit.

4 CHAIRMAN COWGER: Tab 9?

5 MR. SPRINGER: Yes. There is no change. It's
6 exactly the same.

7 CHAIRMAN COWGER: Okay. I thought I would bring
8 that up before they brought it up.

9 MR. WELSH: Thank you.

10 MR. CROFT: I was just saying in '86 there was
11 the following spec, which clarified to the contrary,
12 and in '91 there is not.

13 CHAIRMAN COWGER: Is this type of calculation
14 calculating the plan quantity for this lump-sum item
15 included in the DOT's computation books where you get
16 the computation from the designer of how they derive
17 the quantities? Would that appear in that book? Is
18 this addressed in the DOT's basis of estimates manual?
19 Nobody knows? Okay. May not be pertinent. Strike all
20 that.

21 MR. ROEBUCK: That's internal information that
22 the contractor wouldn't be privy to.

23 MR. CROFT: That's not part of the contract.

24 MR. DEYO: We provide a comp book to them.

25 MR. CROFT: If they request it, we provide it.

1 MR. WELSH: May I make a comment. I believe that
2 Sheffield was instrumental in getting the DOT to note
3 these lump -- this bidding lump sums can be adjusted at
4 the end. Quite frankly, it's a pain in the butt for
5 us.

6 I think we were instrumental in influencing the
7 DOT to note on recent projects over the last couple of
8 years anyway, that the weights on a lump-sum contract
9 are for information only. That's all -- you know, they
10 don't get involved with adjusting the price on a
11 lump-sum contract.

12 We don't want to. We would rather bid at what we
13 take it off at and not have to make an adjustment to a
14 lump-sum contract at the end of the job. And we are
15 trying to guess at bid time which way that adjustment
16 is going to go.

17 So, as I say, all the lump-sum projects that we
18 have seen, at least over the last year are noted that
19 the weights are for information only.

20 MR. DEYO: I have a question on that then. On
21 your take-off, how did you bid this job if it wasn't on
22 take-off, the plan dimension for steel?

23 MR. WELSH: What we had to do, when we make our
24 take-off with rectangular dimensions we are not taking
25 off trapezoids or triangles, and we came up with a

1 weight that should be comparable to the DOT weight.

2 Well, we saw this weight is much higher. We knew
3 this was going to happen on this job, but we can't bid
4 it that way or we would be the high bidder.

5 So, we price the job based on what we take off
6 for the labor and drawings and all the costs in it,
7 divide to come up with the unit price and apply that
8 unit price to the plan quantity. That's the only way
9 you can bid it.

10 MR. ROEBUCK: Yep.

11 MR. WELSH: If the reverse is true, where the --
12 what we take off is half of what the DOT shows, we
13 price it up based on what we take off and multiply it
14 by the DOT weight, which we are going to lose half our
15 money at the end of the job.

16 CHAIRMAN COWGER: Going back to what you said
17 earlier about this new plan note, what you are saying
18 is a lump sum becomes a fixed lump sum for you and the
19 people bidding against you?

20 MR. WELSH: Yes, definitely.

21 CHAIRMAN COWGER: So you don't have to deal with
22 these issues you mentioned somewhere in this
23 correspondence about how you go about preparing a
24 competitive quote. That no longer is an issue, as long
25 as everybody understands it.

1 MR. GRAUPERA: Originally, the research that
2 I have done, going back in history, the research I have
3 done in regards to a statement made earlier, with
4 regards to invoicing as to DOT specs, in the past when
5 there was a pay item for tonnage, an adjustment was
6 made.

7 Now, you have a pay item that's on a tonnage
8 base. It's not lump sum. You are making an adjustment
9 against the bills for materials, the shop bills,
10 however you want to refer to it.

11 So, the adjustment to the total tonnage was done
12 at the end based on that. You have the tonnage item
13 that you can either overrun or underrun.

14 The industry, as he alludes, wanted to go to a
15 lump sum because it is a lot easier and somewhat more
16 fair if you underrun the tonnage because if you
17 underrun the tonnage provided in the original contract,
18 then you've got fabrication costs and erection costs
19 that you are not going to get out of it unless you
20 underrun it by more than 25 percent, so you can
21 renegotiate the price.

22 So, the lump sum was something that DOT went to
23 to the benefit of the industry.

24 MR. WELSH: We pushed for it.

25 MR. GRAUPERA: Exactly. At the same time we

1 provided a tonnage for, at the time of -- in the
2 plans -- and the only difference between that, the
3 Brickell job and the current job, is that it didn't say
4 for information purposes only. It was giving them a
5 rough estimate as far as of the tonnage.

6 Now, if you use that logic, then the additional
7 tonnage doesn't have any cost of fabrication, doesn't
8 have any cost of erection. It's just the cost of the
9 material.

10 Now, the Department, back when we were dealing
11 with the issue at our level without getting anyone else
12 involved, we made the offer to the contractor of going
13 ahead and settling with the 120,000 pounds at the cost
14 of the material.

15 They rejected that, they wanted a full amount,
16 which was the lump sum divided by the total tonnage
17 provided for in the plans, which includes the
18 fabrication costs and erection costs.

19 We felt that was not fair based on our
20 interpretation of the specs, so we went ahead and paid
21 what we felt they were due.

22 So, it's either one or the other. You can't say,
23 well, I want 120,000 pounds but I also want it at the
24 cost that I bid on.

25 So, if you take the 120,000 pounds, you multiply

1 it times 30 cents, you are looking at 36,000 versus
2 45,000 which is what we paid for. We felt we were
3 being as fair as possible with the contractor at the
4 point of -- that we made the offer.

5 CHAIRMAN COWGER: You did execute a supplemental
6 agreement, though, that had a reservation clause in it
7 that paid him for somewhere in the range of \$40,000?

8 MR. ROEBUCK: Right.

9 MR. GRAUPERA: That did include -- the
10 supplemental agreement did include the amount of weight
11 of the bolts.

12 CHAIRMAN COWGER: Okay. I think that's behind
13 us.

14 MR. GRAUPERA: I don't know if we ever answered
15 that question.

16 CHAIRMAN COWGER: Those numbers that you just --
17 that number that we just got for the supplemental
18 agreement, if you will look in the contractor's Exhibit
19 No. 9, the second page has some calculations by Carr
20 Smith down at the bottom. I am assuming that the
21 amount that you paid is somewhere in the range of those
22 first two numbers, 41,000 and 1,000.

23 MR. GRAUPERA: Which exhibit are you looking at?

24 CHAIRMAN COWGER: Contractor's Exhibit 9, second
25 page. A letter from Carr Smith. We don't need to get

1 precise, but basically the 41,572 and the 1,084 are the
2 amounts you have already paid by supplemental
3 agreement. It may not be an exact number, but it's in
4 that range.

5 MR. GRAUPERA: We have paid 42,656 of which
6 this --

7 CHAIRMAN COWGER: That's what this is.

8 MR. GRAUPERA: -- of which 30,800 was in the
9 bascule leaf and 11,856 was the bascule pier.

10 CHAIRMAN COWGER: Now, Carr Smith at that point
11 had recommended that you also pay for the other 80,000
12 pounds at 30 cents, which I think supports what you
13 just said a while ago about the possibility of paying
14 only -- this doesn't exactly support what you said, but
15 paying only for the price of the steel itself, leaving
16 out the fabrication costs?

17 MR. GRAUPERA: Correct.

18 CHAIRMAN COWGER: But DOT did not accept that
19 recommendation?

20 MR. GRAUPERA: The recommendation that Carr Smith
21 did, Bill Junkin, he had just come off of the 27th
22 Avenue. He himself did not realize that the '86 was
23 not the same as the '91. He was still basing his
24 interpretation as to what we should pay based on the
25 '86.

1 CHAIRMAN COWGER: Now, going back to a couple of
2 things you said, I want to be sure we've got this
3 clear. You mentioned that the industry was involved in
4 a change, or that DOT made in their policy. That had
5 to do with the note that says the plan quantity of
6 structural steel is only for information purposes,
7 correct?

8 MR. GRAUPERA: No, that was the change from going
9 with the tonnage to a lump-sum item.

10 CHAIRMAN COWGER: Okay.

11 MR. WELSH: That was many years ago.

12 MR. CROFT: He said that was a new adjustment,
13 for information only.

14 MR. WELSH: Unit price to lump sum. The industry
15 did push for that.

16 CHAIRMAN COWGER: But this was many years ago?

17 MR. WELSH: At least eight or ten.

18 CHAIRMAN COWGER: The point is none of that
19 conversation has anything to do with the change between
20 the '86 and the '91 spec?

21 MR. WELSH: Right.

22 CHAIRMAN COWGER: The sentence that was deleted
23 in the '91? Okay. Got that square.

24 Does anybody have any -- probably not -- anybody
25 have any idea why DOT made that spec change?

1 MR. GRAUPERA: The only thing that I --

2 MR. DEYO: They are not here.

3 CHAIRMAN COWGER: Strike that question.

4 MR. WELSH: Could I make another comment? The
5 weights we were paid on New Smyrna were based on our
6 shop drawing weights, with corrections, but it weighed
7 exactly like this project.

8 Whether it was a plan error, original plan error
9 or whatever, the weight of that bridge as submitted on
10 invoicing was calculated exactly the way this job was,
11 rectangular dimensions because the computers, you can't
12 put trapezoids and other garbage in there and mix it up
13 and come up with anything that makes any sense. You
14 will have to do everything manually.

15 CHAIRMAN COWGER: Let me ask one other question,
16 if I could. Well, not a question. Let me make a
17 statement and see if the parties agree with what I'm
18 saying here.

19 The root of this dispute is over interpretation
20 of Section -- of Article 460-38.3 and how that's going
21 to be applied to calculating the plan quantity of
22 structural steel. Now, am I correct there?

23 MR. WELSH: Yes.

24 CHAIRMAN COWGER: The real question or the real
25 comment I want to make is this. It appears to me that

1 the difference between the two parties is that the
2 contractor is saying that, with some limitations, that
3 the quantity of steel ought to be calculated based on
4 the original size of the plates before they were cut,
5 and, you know, I recognize we have to square in, that
6 sort of thing that's not in there.

7 The DOT's position is calculate the structural
8 steel based on neat dimensions in the finished
9 structure. Have we got it pretty well tied down?

10 MR. WELSH: Except there's still some things that
11 even though they say it's neat, they're saying don't
12 deduct for that.

13 CHAIRMAN COWGER: Copes and holes drilled for the
14 bolts, is that what you're talking about?

15 MR. CROFT: We are not saying do all this
16 (indicating). But the basic external dimensions of the
17 shape given in the plans.

18 CHAIRMAN COWGER: Of a particular plate.

19 MR. WELSH: What we are saying is that they are
20 sitting here deciding what is going to count, what is
21 not going to count. The only document that takes the
22 arbitrariness out of it is the manufacturer's manual.

23 CHAIRMAN COWGER: DOT has contested whether or
24 not that's applicable. Okay. You are saying that's
25 industry practice?

1 MR. WELSH: Yes, sir.

2 CHAIRMAN COWGER: Not taking sides on the issue,
3 just trying to make sure we know where we stand.

4 MR. ROEBUCK: I have a question. Nobody is
5 representing KSA, but there are some letters here,
6 there is a statement here, "Generally the contractor's
7 pay weight summary does appear to be representative of
8 the work produced and no major items have been included
9 that should not be included."

10 That's your engineer talking.

11 MR. GRAUPERA: That is correct. He had used the
12 wrong interpretation coming off of the 27th Avenue. He
13 was still basing his interpretation on the '86. It's
14 the same designer of record for 27th Avenue and for
15 Brickell.

16 That is why we did not --

17 MR. ROEBUCK: May be.

18 MR. GRAUPERA: I have three observations if
19 I may. He's mentioned the specs requiring adjustment.
20 I don't see where the specs require the adjustment of
21 the total steel computation or the total weight of the
22 steel.

23 And invoice, that's for DOT specs. We don't pay
24 for invoice, we pay for plan quantity.

25 It's getting away -- we've gotten away from that

1 invoicing for the tonnage of the steel.

2 The last thing is price job prior to bid, but yet
3 DOT was never notified of the discrepancy based on the
4 steel that he was assuming at the time of bid.

5 So, those are three observations that I would
6 just put out on the table.

7 CHAIRMAN COWGER: Your last observation, how did
8 that affect DOT? Them not notifying you, what effect
9 did that have on DOT?

10 MR. GRAUPERA: It would have been real simple
11 back at the time of bid.

12 CHAIRMAN COWGER: Oh, during the bidding process.

13 MR. GRAUPERA: Yes, this is just for information
14 purposes. You are not to use this to come up with your
15 bid.

16 CHAIRMAN COWGER: That did not appear in the
17 plans that he bid with, that "for information purposes
18 only" did not appear on the plans?

19 MR. GRAUPERA: No, it did not.

20 MR. HERNANDEZ: He admitted that he had prior
21 knowledge that plan quantity was wrong.

22 MR. ROEBUCK: Did you hear from any other steel
23 suppliers on the job?

24 MR. WELSH: That prior knowledge may have been
25 two or three or four days before the bid. Now you are

1 getting bascules out a couple of months ahead of time.

2 CHAIRMAN COWGER: We don't need to spend a lot of
3 time on that issue.

4 MR. CROFT: What is the date of the letter you
5 are referring to?

6 MR. ROEBUCK: July 22, 1995.

7 CHAIRMAN COWGER: What tab is that?

8 MR. ROEBUCK: Tab 16. It's the top of page two
9 of five.

10 MR. CROFT: Involves the Standard Specifications.

11 MR. ROEBUCK: Contractor's presentation.

12 MR. CROFT: It clearly says in that letter he's
13 saying 80,000 to 85,000, and what he's requesting is
14 waste convenience.

15 MR. ROEBUCK: I didn't look at all that
16 nomenclature. What you call it, he doesn't call it
17 that. I think that's more or less what you call it.
18 He says you never saw his waste.

19 MR. CROFT: You are pointing out in that letter
20 that the engineer is saying he's right and to pay for
21 it, but I don't see that here.

22 MR. ROEBUCK: You haven't disputed his quantity.
23 That's what I kept seeing. Doesn't look like the
24 quantity is in dispute. It's the method of making
25 offers to negotiate that thing at some very reduced

1 unit prices.

2 MR. CROFT: We agree. We didn't disagree with
3 his calculations, only that some of it was not supposed
4 to be paid per the specs.

5 MR. SPRINGER: I think we agree that the 120,000
6 pounds --

7 MR. CROFT: He said he calculated based on
8 rectangular dimensions. We are saying that's
9 inappropriate, therefore, we didn't pay for it.

10 MR. DEYO: Based on the plans --

11 MR. ROEBUCK: They never really put forward a
12 case on the fact that they calculated the plans at less
13 amount. Your numbers didn't come quite out. I never
14 saw anything say, look, we measured that plan quantity
15 and multiplied by 490, and that's a -- a million, three
16 is right. You said a million five, 40 is about right.

17 MR. DEYO: All he's saying is the amounts, using
18 the dimensions in the plans.

19 MR. ROEBUCK: I never saw that. I never saw any
20 take-off information where you had retaken off the job
21 and disputed their overrun the way you would do it.

22 MR. CROFT: I took that as what this is, they say
23 waste convenience, that's what I am saying. That's why
24 it is outside the plan.

25 MR. WELSH: I don't think anyone has ever checked

1 the weights that we submitted, line item by line item.

2 CHAIRMAN COWGER: That's in your exhibit? In
3 your --

4 MR. SPRINGER: Can I address that since I put
5 this together? The invoice is -- what is not -- we
6 have the actual shop drawings and those are filled in.

7 An example of that is in DOT's Tab 12 where the
8 weights are, and DOT has never added them.

9 As far as the transition from the '86 to '91
10 specs, because we have heard that several times in the
11 last minute, using the dimensions shown in the plans,
12 that is from the first sentence of the spec, and there
13 was no change between 1986 and 1991 with respect to
14 that sentence.

15 CHAIRMAN COWGER: We already established that.

16 MR. SPRINGER: We established the lead-in about
17 furnished to the project, which was in the very
18 beginning, but this, there is no change between using
19 the dimensions shown in the plans. That was also in
20 the '86 specs.

21 CHAIRMAN COWGER: We are with you now.

22 MR. SPRINGER: We just think, in summary on the
23 legal point, it's not enough to be silent. If DOT did
24 not want the AISC code and the industry practice to
25 apply and did not want rates to be computed like that,

1 they should have said so.

2 It's not enough to just delete the language that
3 they deleted. Silence alone doesn't do it. If they
4 wanted to depart from industry practice, then that's
5 the trade practice, exhibit that we had, which is
6 three.

7 Unless you say otherwise, the parties contracting
8 the subject matter concerning known usages prevail,
9 incorporate such usage into their agreement if nothing
10 is said to the contrary. It's not enough just to say
11 nothing.

12 MR. WELSH: Even in this case the DOT is saying
13 don't take out the copes and holes but do take out this
14 other stuff. It's kind of an arbitrary decision, and
15 this spells it out.

16 MR. GRAUPERA: In one of the drawings that was
17 attached, you've got this rectangular piece. You have
18 colors in yours. What we are saying is this cut-out
19 here of this rectangular piece, this whole corner beam
20 cut out is not a cope and it's not a clip.

21 CHAIRMAN COWGER: We understand.

22 MR. GRAUPERA: And they shouldn't be paid for it.
23 That's what we are saying.

24 MR. CROFT: Also, he's talking about, when we
25 deleted certain parts from the '86, this contract has

1 to be read as a whole. You know, by not being there
2 now, it's read differently, that's why it has to apply,
3 not what used to be there.

4 CHAIRMAN COWGER: Is it true, though, that when
5 you deleted that sentence -- and I think I heard the
6 contractor saying this, you departed from industry
7 practice in how you calculate the steel?

8 MR. CROFT: I don't know.

9 MR. SPRINGER: I just want to make it clear,
10 that's not the point I wanted to make when they deleted
11 they departed from industry practice. Our point is
12 industry practice controls unless they say otherwise.

13 In '86 they had something that might have
14 departed from industry practice. In '91 when they say
15 nothing, the contractor has to follow industry
16 practice.

17 CHAIRMAN COWGER: Is there anything else either
18 party has to say? I want to go back, the first
19 statement you made, Gus, you made three statements.
20 Briefly, what was that one again?

21 MR. GRAUPERA: The specs required an adjustment.

22 CHAIRMAN COWGER: Okay. You say it did or did
23 not?

24 MR. GRAUPERA: I say it does not require an
25 adjustment for the tonnage.

1 CHAIRMAN COWGER: Expand just a little bit on
2 that. Can you tell us why you made that statement?

3 MR. GRAUPERA: The contractor is basing the
4 statement that an adjustment needs to be made at the
5 end of the contract. A lump-sum amount is a lump-sum
6 amount.

7 It's not adjusted unless, in this particular
8 case, where you fall into the area of whether -- if you
9 provide them with a quantity, total quantity, that's
10 back-up for your lump sum.

11 If there is an inquiry, change of 5 percent or
12 \$5,000, I think the other one was \$5,000, if that
13 changes, then you have to adjust your lump sum. That's
14 why we went ahead and said okay, are you correct based
15 on that, and we are adjusting the lump-sum amount by
16 the \$42,000.

17 What I'm saying is that there is no adjustment
18 that is required on a lump-sum basis, on a lump-sum
19 amount on the new jobs. It's not -- you know, if it's
20 for information purposes only, then you don't adjust.

21 It's not an adjustment that takes place
22 automatically at the end of the job regardless of what
23 the shop drawings say. They make it sound like it's an
24 adjustment that has to take place at the end of the
25 job.

1 No. It doesn't need to take place unless what
2 happened on this job happened and we went ahead and
3 made the adjustment.

4 MR. WELSH: In Sheffield's case we ignored 1 to 2
5 percent adjustments. But when -- particularly when the
6 \$500 was in effect, \$500 on this job is less than half
7 a ton of steel, even though under the new spec it is
8 5,000, 5 percent or \$5,000, whichever is smaller.

9 At the way steel is being priced these days,
10 you're still talking about a three to five ton
11 adjustment. You know, if you have a thousand ton job,
12 that's nothing.

13 As I say, if it's a real small quantity, we
14 ignore it. Most of the time the State weight is within
15 one and a half to three percent of -- less than what we
16 have.

17 And it's only in bascules where you're talking
18 about close to \$2 a pound materials where the
19 adjustments get serious.

20 CHAIRMAN COWGER: Does either party have -- I got
21 us off track, and maybe I shouldn't, but does either
22 party have anything else they feel compelled to say at
23 this point?

24 MR. SPRINGER: Gene, do you want this as an
25 exhibit? I have copies, it just compares the two

1 specs.

2 CHAIRMAN COWGER: We don't need that. We can do
3 that.

4 MR. CROFT: Let me --

5 CHAIRMAN COWGER: Just a second. Mr. Roebuck,
6 Mr. Deyo, do you have any questions?

7 MR. ROEBUCK: No.

8 CHAIRMAN COWGER: Go ahead.

9 MR. CROFT: I'm not sure they said that -- he
10 didn't think that our engineer made a complete take-off
11 of all their quantities. I'm not sure -- I understood
12 they had.

13 I know that we did do a take-off of the girders,
14 which is the primary source of difference in our
15 quantities.

16 CHAIRMAN COWGER: The main girders?

17 MR. CROFT: Yes, which is where those big areas
18 are that we are saying should not be paid. That
19 amounted to 64,000 out of the 80,000 difference that
20 we're talking about.

21 MR. SPRINGER: Is that in the record?

22 MR. CROFT: Yes.

23 MR. SPRINGER: Can I just address that. We have
24 numerous public records requests going back to 1996,
25 and we never saw anything until this Exhibit 16, and

1 KSA says they did a limited review making selected
2 checks, please let us know if you want us to do a
3 detailed review.

4 So, I'm not sure -- I am sure we object to
5 anything coming in about more detailed or complete
6 take-offs because it hasn't been provided contrary to
7 the --

8 MR. WELSH: I believe we found some errors, too,
9 in that weight that -- that 64,000 pounds.

10 MR. CROFT: This was produced in preparation for
11 the arbitration. It didn't exist prior to. We haven't
12 been told that there was a dispute, to go back and
13 check it.

14 CHAIRMAN COWGER: I really think the Board has
15 enough information to act on this matter. So, we are
16 going to call it to a close. This hearing is hereby
17 closed.

18 The Board will meet to deliberate on this claim
19 in approximately six weeks. You will have our final
20 order shortly thereafter.

21 (Whereupon, the hearing was concluded at 12:30 p.m.)

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CERTIFICATE OF REPORTER1
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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 16th day of August, 1998.



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