

STATE ARBITRATION BOARD

ORDER NO. 6-99

/// NOTICE ///

In the case of Hubbard Construction Company versus the Florida Department of Transportation on Project Nos. 10340-3503 and 10340-3504 in Hillsborough County, Florida, both parties are advised that State Arbitration Board Order No. 6-99 has been properly filed with the Clerk of the State Arbitration Board on October 4, 1999.



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

S.A.B. CLERK

OCT 4 1999

FILED

Copy of Order & Transcript to:
Greg Xanders, P. E., DOT State Construction Engineer

Ernest J. Wolf, Vice President-Contracts
Hubbard Construction, Co..

Copy of Order to:
W. Robert Vezina, Esquire
Attorney for Contractor

STATE ARBITRATION BOARD

ORDER NO. 6-99

RE:

Request for Arbitration by
Hubbard Construction Company on
Job No. 10340-3503 & 10340-3504 in
Hillsborough County

The following members of the State Arbitration Board participated in 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 11:50 a. m. on Tuesday, August 17, 1999

The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 6-99 in this cause.

ORDER

The Contractor presented a request for arbitration of a claim for additional compensation in the total amount of \$ 53,830.00, the amount deducted from payments, because the Department of Transportation determined that certain Subsoil Excavation and the corresponding Embankment originally included in pay estimates was outside the limits for such work as indicated in the plans and specifications. The Contractor is requesting compensation for pre-award interest and the cost of these proceedings in addition to the \$53,830.00. The claimed amount is based on 5,383 C.Y. of Subsoil Excavation at the bid price of \$5.00 per CY and 5,383 CY of Embankment at the bid unit price of \$5.00 per C.Y.

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

We performed the work in question here in full accordance with contract plans and applicable specifications and as directed by the Department acting through a CEI Consultant they employed to carry out construction engineering and inspection on this project. The Subsoil Excavation operation was carried out under ongoing inspection of the work by these Department representatives. A joint survey was made by the Inspector and our personnel when excavation of each area was completed. Agreement was reached at that time on the depth to which Subsoil Excavation was to be accomplished. We were not advised at that time that the pay volumes would be restricted to the template established by the Department's Standard Index Drawing covering excavation of plastic soil.

In some instances clay material was excavated to a greater depth than indicated by the Department's applicable Standard Index drawing. This was done at the direction of the Department's inspector, essentially in areas where the clay near the bottom of the cut contained muck and was slimy in nature. We have never looked on this sort of action as a change in the specifications, because the specifications provide that subsoil is subject to field variation.

In the areas in question, the Department originally measured Subsoil Excavation to the bottom of the actual excavation and payment for such quantity was made on periodic estimates. About one year later, the Department determined that measurement for payment of Plastic Subsoil is to be based on the template line shown in the Standard Index. The Standard Index in effect at the time of bidding showed the template to be a line parallel to and four (4) feet below the bottom of the base course. During the project, a more recent Standard Index was applied which reduced the depth below the base course to two (2) feet.

There was considerable discussion between the Department and us on the multi line calculations used to determine earthwork quantities on this job. During those discussions we were not made aware that the Department would restrict the quantities of Subsoil Excavation and Embankment to the Standard Index template.

To the best of our knowledge there is no dispute on the actual quantities of Subsoil excavated and Embankment placed in the areas where pay quantities are in question. The question is only whether measurement should be to the bottom of excavation or to the template line established in the Standard Index drawing with the 0.2' construction tolerance applied.

We refer to the following specifications to support our position that measurement of these items should be to the depth actually excavated.

2-3 states that the estimated quantities shown in the plans and proposal form are approximate.

9-1.3.1 states that the method or combination of methods of measurement shall be those which will reflect with reasonable accuracy the actual surface area of the finished work as determined by the Engineer.

120-2.3 states that subsoil excavation is subject to field variations in accordance with the conditions actually encountered.

120-4.1 states that subsoil excavation is to be to the cross sections shown in the plans or indicated by the Engineer.

We contend that instructions from the Engineer as to the depth of subsoil excavation at a particular location do not have to be in writing. To require written direction in these instances would have caused significant delays in the work.

During the time that this work was underway and until about one year later, it was our understanding that we would be paid under the pay item Subsoil Excavation for the actual

quantity of subsoil removed and the corresponding quantity of Embankment.

We did write some letters stating that the Department's representatives should not direct our project personnel to do work outside the scope of the contract. However, this did not apply to the depth of subsoil excavation which was work included in the contract.

There was no financial incentive for us to excavate substantially below plan limits if we were not going to be paid for this extra work.

We are claiming compensation for the items in question based on the actual quantity of work accomplished.

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

This is the only one of 88 claims submitted by the Contractor, other than one from the Paving Subcontractor, that has not been resolved.

We do not agree that the Contractor was directed to excavate subsoil below the elevation established by the plans. Over-excavation was not done at the direction of the CEI inspectors. Control of the depth of this excavation is a Quality Control responsibility which is the responsibility of the Contractor. The Contractor used an Engineering Firm to check the depth of subsoil cut prior to April 17, 1995. About one-half of the subsoil areas had been excavated by that time.

The CEI Project Engineer often cautioned the Contractor's Project Coordinator not to over excavate plastic materials. An Inspector is not authorized to waive the specified limits of plastic material excavation. There were only a couple of places where slimy material was encountered at the bottom of subsoil cut.

The Contractor has not submitted documentation to support the additional quantities for which he is requesting payment.

The Department furnished the Contractor with adequate documentation of the deduction in the quantities of Subsoil Excavation and Embankment a year before the deduction was made on a progress estimate. We withheld making the deduction, because of the large amounts due the Contractor on Supplemental Agreements that could not be included for payment for several months while these documents were being processed. Once payment could be made under the Supplemental Agreements, we made these deductions.

A Settlement Agreement dated 12/2/98 limited future claims to subcontractor issues and “Any verifiable quantity adjustments for base, subsoil excavation and embankment performed by Hubbard”. This dispute does not fall under the second exception categories, because “verifiable quantity adjustments” must comply with the contract documents. The quantities claimed do not.

Our position that no additional compensation is due is supported by the following specifications:

5-2 Coordination of Plans, Specifications and Special Provisions

5-6 Authority and Duties of Engineer’s Assistants states that the presence of the inspector shall in no way lessen responsibility of the Contractor.

9-1.4 Construction outside Authorized limits..

120-4.1 establishes a construction tolerance of 0.2' for depth of subsoil excavation.

102-12.1.1 states where subsoil excavation extends outside the lines shown in the plans, the quantity of additional material used to backfill such areas will be deducted from the quantity to be paid for Roadway Excavation or Borrow Excavation as applicable.

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

a) The root of this dispute is whether or not the Department of Transportation directed excavation of subsoil below the template limit established by the Standard Index drawing which

controls the method of measurement.

b) Even though it may not fairly reflect the actual work effort required to remove subsoil, there is a well established precedent on Department of Transportation contracts of establishing the lower limit of payment for excavation of plastic type subsoil to a template limit plus a tolerance of 0.2'.

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 nothing for his claim.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$ 219.90 for Court Reporting Costs.

S.A.B. CLERK

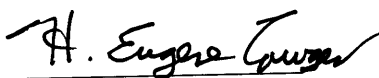
OCT 4 1999

FILED

Tallahassee, Florida

Dated: 10/4/99

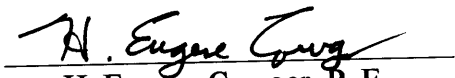
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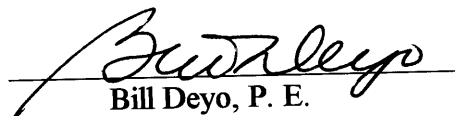
H. Eugene Cowger, P. E.
Chairman & Clerk SAB

10/4/99

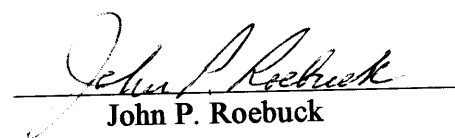
DATE



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



Bill Deyo, P. E.
Member



John P. Roebuck
Member

STATE ARBITRATION BOARD
STATE OF FLORIDA

HUBBARD CONSTRUCTION COMPANY)	
)	
)	
)	
)	PROJECT NO. 10340-3503
- and -)	
)	LOCATION: Hillsborough
)	County, Florida
)	
)	
DEPARTMENT OF TRANSPORTATION)	
<hr/>)	

COPY

RE: Arbitration In The Above Matter

DATE: Tuesday, August 17, 1999

PLACE: Cummings & Snyder
1004 Desoto Park Drive
Tallahassee, Florida

TIME: Commenced at 11:50 a.m.
Concluded at 12:50 p.m.

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

WILKINSON & ASSOCIATES
Certified Court Reporters
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CATHERINE WILKINSON & ASSOCIATES (904) 224-0127

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

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

APPEARING ON BEHALF OF HUBBARD CONSTRUCTION COMPANY:

Mr. Randy Blankenship
 Mr. Ernest Wolf
 Mr. Charles Loy
 Mr. Allan Fadulion
 Mr. David Dempsey

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Greg Hays
 Mr. Marty Sanchez
 Mr. David Koger
 Mr. Tom Lay

* * *

I N D E X

EXHIBITS	PAGE
Exhibit Nos. 1 and 2 in evidence	4
CERTIFICATE OF REPORTER	43

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 DOT.

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

Our terms began July 1, 1999 and expire June 30, 2001.

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

(Whereupon, all witnesses were duly sworn by the Chairman.)

CHAIRMAN COWGER: The documents which put this arbitration hearing into being are hereby introduced as Exhibit 1. That's the contractor's request for arbitration and everything that was attached to that request. Now, it's a bound booklet.

Exhibit 2 is a rebuttal package submitted by DOT

1 in response to the request for arbitration. We will
2 identify that as Exhibit 2. That Exhibit 2 was
3 furnished a long time ago to the Board members and to
4 the DOT.

5 We have already established that there are no
6 other exhibits to be presented, is that correct?

7 MR. DEMPSEY: Correct.

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

10 MR. KOGER: I do have a copy of the plans if you
11 need them.

12 CHAIRMAN COWGER: That's not an exhibit, but it's
13 good to have those plans.

14 During this hearing the parties may offer such
15 evidence and testimony as is pertinent and material to
16 the controversy, and shall produce such additional
17 evidence as the Board may deem necessary to an
18 understanding and determination of the matters before
19 it.

20 The Board shall be the sole judge of the
21 relevance and the materiality of the evidence offered.

22 We ask that you be sure and keep a copy of the
23 two exhibits. When the Board issues its final order,
24 it will furnish you a copy of the transcript of the
25 hearing, but we will not furnish you copies of the

1 exhibits because you should already have them.

2 This hearing will be conducted in an informal
3 manner. First the contractor's representative will
4 elaborate on their claim, and then the Department of
5 Transportation will offer rebuttal.

6 Either party may interrupt to bring out a
7 pertinent point by coming through the Chairman.
8 However, for the sake of order, please only one person
9 speak at a time.

10 (Discussion off the record)

11 CHAIRMAN COWGER: Mr. Contractor, we would like
12 you to present your case.

13 MR. DEMPSEY: Okay. My name is Dave Dempsey.
14 I'm the division manager of Hubbard Construction.
15 I would like to introduce the people I've brought with
16 me that will speak and give testimony.

17 Allan Fadulion was the project coordinator for
18 this project, through the life of it and probably has
19 the most intimate knowledge and details of the issues
20 we are here to discuss.

21 Ernie Wolf is Hubbard's director of contract
22 administration.

23 Charlie Loy was an on-site superintendent for
24 Hubbard during the course of this work.

25 Randy Blankenship was a grade foreman that

1 performed the majority of this subsoil excavation we
2 are here to discuss.

3 Before I turn it over to Allan Fadulion about the
4 details, basically Hubbard performed subsoil excavation
5 on the project throughout the project, had joint
6 measurements with the Department. We were paid monthly
7 by the Department.

8 The project -- all the work was over. Subsequent
9 to a year later, after the fact, after all the work had
10 been completed, the Department unilaterally made a
11 deduct to the subsoil excavation item.

12 It's my understanding that we had overexcavated,
13 made an unauthorized overexcavation of the subsoil,
14 which we have disputed. We met several times and
15 transferred documents and shots back and forth. That's
16 what we are here to discuss.

17 Allan, do you want to start?

18 MR. FADULION: My name is Allan Fadulion, and I'm
19 a project coordinator for Hubbard Construction.

20 Basically to put everything in perspective from
21 our point of view, when Hubbard commenced with its
22 subsoil excavation, we had in my -- this activity as
23 being one that would be closely monitored. We knew we
24 had clay to take out, and we had some muck material.

25 As DOT has explained again, in several of our

1 previous meetings, the clay we go after and we go to
2 the limit as shown in our plan cross sections.

3 When we encounter muck, that's a material we go
4 after and chase until it's all cleared out.

5 With that in mind, we went ahead and started our
6 subsoil excavation limits of which were initially set
7 in the plans as being four foot below the bottom of the
8 base.

9 At some point in time that limit was changed to
10 two feet, and we proceeded accordingly with those
11 limits in mind.

12 It was never a hard deck that Hubbard
13 Construction considered as a stop point when we got to
14 that limit. If we got to that limit, all we were
15 taking out was hard clay material, we stopped, and we
16 recognized that the two-tenths tolerance, which the DOT
17 has explained, holds.

18 Now when we encounter muck, that's a material
19 that we can go well past the limit.

20 A lot of times, in most of these areas that we
21 have shown overexcavation, in which the DOT has refused
22 to pay, we encountered material that was halfway
23 between muck and clay.

24 We can only surmise that the field inspectors
25 working with our folks made a judgment call on the side

1 of caution to clean out the holes.

2 We did that in their presence. They knew
3 exactly where we were, what we were doing. Of course
4 they're there most, if not a hundred percent of the
5 time. We have Mr. Blankenship and Mr. Loy to testify
6 to that.

7 Up until the time that we completed our subsoil
8 excavation, and we got to a cut-off period where we
9 were looking to get paid for that work, we normally
10 went with survey information that was available at that
11 time.

12 And being that the estimate is as -- just like
13 that, that it's an estimate, we would figure an average
14 depth of cut, approximate the width and station to
15 station distances and come up with a quantity that was
16 going to be due Hubbard for that period.

17 At the time the subsoil was completed, and as
18 we approached the final completion of the job, we
19 anticipated there would be changes. This was based
20 on -- because we made some assumptions. We used some
21 averages to come up with the quantities. We did
22 anticipate changes.

23 The one thing we did not anticipate was not being
24 paid for the material we took out below the limit.

25 Approximately a year after all subsoil excavation

1 was done, when we received estimate number 42, that's
2 when the DOT took out these quantities. It was a
3 combination of both, estimating error and the areas
4 below the limit that they have stated they refused to
5 pay.

6 Jumping real quickly to the DOT's rebuttal, we
7 had stated that it was not until a year after the
8 subsoil was completed that we saw the quantity that was
9 being taken away from us.

10 In this rebuttal it states that we did have the
11 information, we knew the subsoil was being taken out.
12 We did receive a transmittal from the Department within
13 a month after we completed the subsoil excavation, but
14 the multi-line information that we got only had to do
15 with regular excavation and embankment.

16 At that time we asked about the subsoil, and that
17 was still in the process of being finalized. We did
18 not get that information until all the deducts had been
19 taken away from us. And there was a good volume of
20 documents that we got, a lot of cross sections, a lot
21 of multi-line data that we had to pour over and spend
22 quite a bit of time to figure out.

23 Not being familiar with the DOT's multi-line
24 program, we utilized our own ag-tech, plotted the
25 survey information that we had, and came up with our

1 own cross sections in determining quantities that we
2 felt we were due.

3 That is -- that's how we came about with 5300
4 cubic yards that we are looking to get paid, which was
5 not quite the quantity that was taken away from us. We
6 look at the rest of the quantity as being part of the
7 estimating error that we originally expected to be
8 taken away.

9 Basically that's the claim that we have here in
10 front of you. It's our position that we excavated the
11 subsoil under -- in the presence of the DOT inspectors,
12 ICF Kaiser's personnel, and they knew exactly what we
13 were doing, the extent of what we were doing.

14 Our understanding throughout the process, up
15 until we completed all the excavation a year beyond
16 that, was that everything we had taken out was
17 recognized as being material that had to be taken out,
18 and we were compensated.

19 The 5300 cubic yards that they took away from our
20 estimate, that they refused to pay, is quantity that we
21 feel we need to be compensated for.

22 MR. DEMPSEY: Randy, will you explain for the
23 Board, since you were primarily the field person, the
24 process you went through in excavating this subsoil and
25 the input that we received from the engineer on how we

1 excavated it and how it was measured and so forth.
2 Just give the Board an example of what you did.

3 MR. BLANKENSHIP: Okay. Surveyors went through
4 and they put a cut grade for us to what -- you know, to
5 give you a rough idea of where the bottom of your base
6 was to how deep to go. You set up. You dig -- well,
7 we excavated until we dug it down to where we were --
8 thought we were in the limits of where we should be.

9 Then we took all the shots. Sometimes it would
10 be, you know, this side would be a little deeper than
11 that one because there would be more material over on
12 this side of the cut than that side.

13 It was kind of a yo-yo up and down situation with
14 the bottom. You couldn't really draw a flat line
15 across because sometimes going over here you would be
16 just a little bit lower. You know, you would go your
17 limit.

18 Then sometimes if it was four or five, eight,
19 six inches, and it was that slimy muck material, we
20 would -- Kaiser would tell us to, you know, go back and
21 get the rest of it or scratch down and see how deep it
22 is or whatever. If it was six or eight inches, they
23 would go ahead and tell you to take it out.

24 MR. ROEBUCK: Can I ask you about that. Some of
25 this argument is over the two foot or four foot below

1 the base numbers, the plan number or letter numbers.
2 When you started that excavation, were you going to the
3 four foot below the base?

4 MR. BLANKENSHIP: We started off on the four foot
5 originally, then we backed up to the two foot. Some of
6 the two foot, we removed the top just to take out six
7 or eight inches of material.

8 I mean, you know, a couple of inches below or
9 four or five inches below the two foot, you are liable
10 to have a skim of it, you know. Naturally you would
11 take out the four or five inches because it's bad.

12 I mean they were --

13 MR. ROEBUCK: They were out there watching you?

14 MR. BLANKENSHIP: They were out there watching
15 us.

16 MR. DEMPSEY: As far as quantifying the shots.

17 MR. BLANKENSHIP: The shots, I would call that
18 buddy buddy. I hold the pole one time, he would read
19 it. The next time I would read it and he would hold
20 the pole, or vice versa. I think Ray would agree with
21 that.

22 CHAIRMAN COWGER: Let me ask a couple of quick
23 questions. First off, the area that's in the
24 quantity -- the quantity that's in dispute here today
25 is 5,000 plus cubic yards. This was material that was

1 excavated below, let's stay with the four foot for a
2 moment, the four-foot template line, plus did the pay
3 quantity include the two-tenths tolerance?

4 MR. KOGER: Yes, it did.

5 CHAIRMAN COWGER: All right. It's two-tenths
6 below this line shown on the plans. That's the area
7 from that point down to the bottom of wherever you
8 excavated in accordance with this joint survey is the
9 area, the quantity that's in dispute?

10 MR. DEMPSEY: Yes, sir.

11 MR. ROEBUCK: Final estimates that did the
12 paperwork to reduce it, when it -- was that when it got
13 to final estimates?

14 MR. DEMPSEY: That's my understanding.

15 MR. FADULION: It was prior to that.

16 CHAIRMAN COWGER: The CEI made the decision then
17 to make the deduction. Okay, did most of this -- or
18 let's say did all of the volume in question occur in
19 the area where you were working with the four-foot
20 template, or did some of it also occur where you had
21 the two-foot template?

22 MR. FADULION: It occurred in both, mostly
23 about -- less than a third of it in the two foot.

24 MR. ROEBUCK: In some of the documents -- we've
25 been through most of this -- the 5,000 yards -- I will

1 round it off -- is the question. There was about a
2 thousand yards in two areas that looks like some
3 estimate errors. Has that been reconciled?

4 MR. FADULION: Yes.

5 MR. KOGER: Yes, those errors have been
6 reconciled. Errors have been reconciled.

7 CHAIRMAN COWGER: Errors that calculate the pay
8 quantity, excluding the undercut.

9 MR. FADULION: Let me clarify. The errors that
10 have been corrected are the multi-line errors.

11 MR. WOLF: To answer your question, the 5,000 is
12 what we are here arguing about, after what has been
13 paid.

14 MR. ROEBUCK: After adjustments.

15 CHAIRMAN COWGER: That's what is left in dispute?

16 MR. WOLF: Yes, that's what is left in dispute.

17 MR. DEMPSEY: There's really three types of
18 material involved here. There's pure, what we all know
19 as muck, there's plastic material, and I think that was
20 pretty much the basis, Dave, or somebody can speak on
21 that. That was pretty much the basis of reducing the
22 four foot to the two foot, because based on the new
23 geotechnical matter, they felt the plastic material
24 could stay, wasn't that critical to the roadway based
25 on a revised specification.

1 The majority of what we are asking for is, like
2 Allan said, is in the four-foot section, and pertained
3 mostly to muck, which my experience, and I think most
4 everybody in this room, when you encounter a muck
5 pocket, unless there are some extraordinary
6 circumstances, you take all the muck out.

7 MR. ROEBUCK: We haven't done it some places in
8 the past.

9 CHAIRMAN COWGER: Okay, any other questions
10 before the DOT starts?

11 MR. WOLF: I have a couple of things I would like
12 to point out. One is the Department in -- on page 3
13 under page B, the Department's position, they say
14 there's been no documentation by Hubbard to show how
15 the contractor's quantities were derived.

16 We submitted cross sections on this. I'm not
17 sure what they are trying to say here.

18 Again, in Item 2 under A, they say a year after
19 Hubbard had been given the documentation to justify
20 this function, as Allan pointed out, there was no
21 subsoil information on that documentation. We waited
22 quite a while on that.

23 Under B they say that we don't deserve anything
24 because they talk about the various divisions.

25 The one thing I think the Department would like

1 to get away from here and I keep going back to, we
2 never deviated from the documents. Everybody said we
3 did, but it says directed by the engineer.

4 We wrote some letters don't direct our people to
5 do something outside the scope of the contract, but we
6 never told the DOT, nor did we act upon things like
7 that. Whenever they directed something that was in
8 their scope, we went ahead and did it.

9 If we had done what they purport that we were
10 trying to do, the job would still be out there being
11 built. We didn't stop every time we hit a six-inch
12 pocket and say, okay, give us a letter, and waste a
13 whole day. We tried to cooperate with the DOT.

14 I believe the specifications are adequate in
15 specifying, as directed by the engineer, as -- doesn't
16 say as directed by in writing. It just says as
17 directed. It's part of the contract documents. That's
18 what we tried to follow there.

19 Of course, the other thing I would want to bring
20 out is the letter that we signed when we agreed on our
21 claims. The letter we signed when we agreed on our
22 claims was specifically intended to remove these items
23 and allow us to continue on with the dispute.

24 I don't believe there's anything that can be
25 technically or strictly read into the letter at this

1 point in time that doesn't allow us to bring it
2 before the Board. It was our intent all along to bring
3 this -- to either agree on this or be able to carry it
4 forward with some resolution process.

5 CHAIRMAN COWGER: Okay. Can I kind of sum that
6 up by saying it's your position that the earthwork
7 quantities were clearly accepted from the settlement
8 agreement?

9 MR. WOLF: That was our intent all along, and
10 that is the way we wrote it. We are not asking for
11 something beyond the contract. We are not asking for
12 additional money because of a revision or something
13 different.

14 What we are asking for is to be paid the contract
15 unit for something we feel we did while we were out
16 there and it's justifiably payable under the contract
17 documents as they stand, which is basically grant a pay
18 item for this.

19 It wasn't exactly the best pay item in the world.
20 We can't argue with it. If we were going to argue with
21 it today, we might want eight or ten bucks for it, but
22 that's what we've got to accept, that's why it's there.

23 It's not something we are asking outside the
24 contract documents.

25 MR. ROEBUCK: Except for having brought it here

1 for arbitration, have you had trouble with subsoil
2 excavation quantities in that area in the past?

3 CHAIRMAN COWGER: On DOT jobs?

4 MR. WOLF: On DOT jobs?

5 MR. ROEBUCK: Has it been an item of concern?

6 MR. WOLF: It seems as of late that we've had
7 problems with these type situations. As the work goes
8 along on the project and people agree on things, and it
9 gets paid, and then when final estimates gets it, it
10 gets whacked off.

11 I think you will see not only Hubbard but some
12 more people here frequently. We've had this in other
13 districts happen to us, which I don't know why.

14 But in the end the stuff is being removed and we
15 have agreed to quantities and items along the way. So,
16 yes, we've had trouble with this before, but we've been
17 able to work it out so far.

18 MR. DEMPSEY: In kind of closing from our side,
19 we were just -- we were removing the subsoil jointly
20 under the inspector's direction. I would have a hard
21 time sitting here before you all, if we had bid it at
22 \$25 a yard, and I would still be hunting it out there.

23 We were removing it jointly at their direction.
24 There was no motive for us to overexcavate. We were
25 just trying to get the job done.

1 The method -- to me what the problem is, we took
2 jointly sections for payment, survey shots for payment
3 after the fact when all the paperwork got sorted out.
4 The Department tended to hold to the two-foot and
5 four-foot straight line with the tolerance in the
6 balance.

7 I don't think the quantity that we removed is in
8 doubt, it's just a matter of whether they authorized us
9 to do it. Our position is they were with us there hand
10 in hand.

11 CHAIRMAN COWGER: It's just a matter of the
12 payment is what we are here to talk about.

13 MR. ROEBUCK: And you still have some question
14 about the authority of that August letter directing you
15 to reduce the baseline?

16 MR. DEMPSEY: Yes.

17 MR. LOY: When we constructed up there we removed
18 what we could, and the good dirt we had on top, we
19 back-cast it. We never backfilled holes or anything
20 until the inspector was with us and we took our shots.

21 MR. DEMPSEY: As a matter of fact, I think there
22 is some question of whether the inspectors were there
23 all the time. They weren't there all the time.

24 CHAIRMAN COWGER: That's to be understood.

25 MR. DEMPSEY: My field people tell me that

1 working jointly with Kaiser Inspections, if they had to
2 go look somewhere, go back to the office, our people
3 were instructed if we made a subsoil excavation, that
4 we were not to backfill it until they were present and
5 we took the shots.

6 It's my understanding the inspectors were always
7 present when we started the excavation, they were there
8 when we finished it. There was no dispute over what
9 was taken out or what was -- something was backfilled
10 before they got back.

11 CHAIRMAN COWGER: It's your position that your
12 field people were, in fact, operating under direction
13 from the CEI --

14 MR. DEMPSEY: Yes, sir.

15 CHAIRMAN COWGER: -- as to the depth to which
16 they excavate?

17 MR. DEMPSEY: Yes.

18 CHAIRMAN COWGER: I'm sure we will hear about
19 that when the DOT gets their rebuttal going. Okay,
20 anything else on that?

21 I have one quick question. When you changed the
22 vertical limits that went from four feet to two feet
23 below the bottom of the base for the template for the
24 subsoil excavation, was there any adjustment to the
25 contract unit price at that point?

1 MR. KOGER: No.

2 MR. DEMPSEY: No, but we would be happy to
3 discuss it.

4 CHAIRMAN COWGER: I didn't dream that up. I saw
5 it somewhere in all this documentation.

6 Proceed on, DOT, whoever is going to present the
7 case.

8 MR. SANCHEZ: For the board's sake, Dave Koger
9 was the project engineer for ICF Kaiser. Greg Hays was
10 the senior inspector and I was the resident for the DOT
11 probably during half of the contract.

12 Dave and Greg have -- a lot of eyewitness
13 testimony and information that will rebut some of the
14 stuff.

15 CHAIRMAN COWGER: Before you begin, in the
16 interest of trying to conserve time, there's a lot of
17 correspondence and a lot of documentation that's been
18 provided in the exhibits, particularly in the DOT
19 exhibits, which we can read, and either have read or
20 will read.

21 So, what the Board is the most interested in
22 hearing is you can highlight the various specifications
23 on which you base your position, but let's not get into
24 a lot of detail about that because we can read.

25 Highlighting is important, but the other thing is

1 rebutting the contractor's position that says we were
2 operating under the direction of a DOT representative
3 when we made this cut, and it was our understanding
4 that he was telling us to cut that deep basically.

5 So, if you will address those two things and not
6 get too far off track.

7 MR. KOGER: My agenda is to be out of here in 15
8 minutes.

9 CHAIRMAN COWGER: Fine.

10 MR. KOGER: I will make it short and sweet. A
11 couple of questions brought up in Hubbard's
12 presentation, the question of the two-foot versus
13 four-foot situation came up. There's also a partial
14 explanation of that in our rebuttal.

15 A little further explanation is in the beginning
16 of the job Hubbard unfortunately made a mistake, like
17 some of us do, and cast a retaining wall over an area
18 that had to be -- called for subsoil excavation.

19 At that point in time we didn't want to have to
20 take the retaining wall out. Since the subsoil was
21 down close to the limits of the four foot anyway, and
22 definitely not within the two-foot limit of the newer
23 spec. We used that as justification to leave the
24 retaining wall in place and not do subsoil in that area
25 and stay away from it.

1 Also, at that point in time we realized that time
2 was of the essence.

3 As the letter of documentation in the package
4 states, we negotiated a new price for disposal of
5 unsuitable materials, which was more than the \$5.

6 Hubbard was agreeable to make the commitment to
7 go to the two-foot tolerance for the next phase of
8 construction.

9 The first phase of construction, which was new
10 construction, we did all underneath the four foot.
11 When we switched over to reconstruct the existing
12 roadway, where we could get accurate documentation of
13 what we were doing, we started with the new two-foot
14 limit. That's basically the story behind that.

15 MR. ROEBUCK: The spec was that letter?

16 MR. KOGER: The spec is the letter. The new 1994
17 standards.

18 CHAIRMAN COWGER: It's the standard index.

19 MR. ROEBUCK: But you didn't have it on this job?

20 MR. KOGER: We did not have it on this job. No,
21 the District policy and the State policy is that if it
22 was agreeable to the contractor, you can go to the new,
23 more current standard indexes, which is exactly what we
24 did. Hubbard did this in full agreement at the time.

25 A couple of other issues. I would like to rebut

1 that the contractor stated that we did not provide them
2 with subsoil excavation until more than a year after
3 the subsoil excavation was completed.

4 Our records do not indicate that. The contract
5 documentation does not indicate that. When we
6 submitted our multi-line package to the contractor,
7 copies of which we have here, it included the subsoil
8 excavation.

9 I also gave Allan approximately three weeks after
10 that March 3 date a copy of the multi-line disks, which
11 included all earthwork quantities and all subsoil
12 excavation quantities, and so much as offered to
13 instruct Allan how to use multi-line earthwork, which
14 he did not understand at the time.

15 CHAIRMAN COWGER: The point here is that the
16 quantity of subsoil excavation that's in question here
17 today, the 5,000 cubic yards, was carried in progress
18 estimates for -- the contractor testified a year after
19 the work was completed.

20 MR. KOGER: I will give you an explanation for
21 that. I wanted to put it in this package. The
22 Department asked me not to. And the reason is that
23 this job, as you will notice in part of the project
24 documentation, it indicates there was \$6 million of
25 supplemental agreements on this job.

1 Due to the DOT processing, if you start a
2 supplemental agreement that has a pay item for, say,
3 earthwork in it, normally what happens, once we
4 in-house with the DOT, get it approved, send it to the
5 contractor for signature -- and history on this job
6 says that takes 30 days.

7 Once the contractor approved it, it goes back to
8 the DOT. That takes another 30 days. There's at least
9 60 days in there, two months to process a supplemental
10 agreement.

11 We have 48 supplemental agreements on this job.
12 A good number of them have subsoil excavation or
13 excavation quantities in it. What happens is you can't
14 start the next one until the previous one is done.

15 CHAIRMAN COWGER: Those were due to changes in
16 the work, right?

17 MR. KOGER: Yes. By the time -- Hubbard, being
18 the good contractor that they are, knowing that we had
19 to get the job done, they didn't want to wait on
20 supplemental agreements. Once we negotiated with
21 something, they went on with the work, understanding
22 that we would process the supplemental agreements as
23 timely as the DOT mechanisms would let under the
24 circumstances.

25 CHAIRMAN COWGER: That's not an issue here today.

1 MR. KOGER: No, but what was an issue, as a
2 project engineer, I know I owe the guy \$4 million that
3 I can't pay him because the supplemental agreements are
4 just in this mill. Can I justify taking the money away
5 from him that I've paid him because, you know, of
6 overpayment of subsoil? No, I couldn't. That's -- and
7 that's what the situation was.

8 I told Allan this, I told Mike Hill this.
9 Dave Dempsey, I've told you that, because the reason
10 that money was not deducted was there was money
11 outstanding for supplemental agreements. I couldn't in
12 good conscience take that money away from them until we
13 had paid the supplemental agreements. Once we got the
14 supplemental agreements paid, the money came off.

15 MR. DEMPSEY: But as we sit here today, we are
16 still due money on other items of supplementals that's
17 in the mill, though, after the job is over with years
18 and years now.

19 MR. KOGER: I think the only thing left
20 outstanding is the claim with Couch.

21 MR. FADULION: We have the two --

22 CHAIRMAN COWGER: You bring up a good question.
23 Is there another claim outstanding?

24 MR. KOGER: Yes, there is.

25 CHAIRMAN COWGER: How much?

1 MR. KOGER: It's a claim by a subcontractor
2 for --

3 MR. DEMPSEY: \$1,300,000.

4 (Discussion off the record)

5 CHAIRMAN COWGER: Go ahead.

6 MR. KOGER: Bottom line, number one, the specs
7 are clear that quality control is the responsibility of
8 the contractor. This case basically rests on the fact
9 of whether or not the DOT -- the Kaiser inspectors
10 directed Hubbard's field forces to overexcavate plastic
11 subsoils.

12 As far as I'm concerned, there is not a question
13 about muck. We have paid a hundred percent of the muck
14 shown verifiable by our multi-line quantities.

15 Off track for just a second, when I make the
16 statement in our rebuttal that we are not provided
17 verifiable quantities by Hubbard for their quantities,
18 Hubbard did submit at one time calculations that were
19 in error. I advised Allan that those calculations were
20 in error.

21 They did not include the original template. They
22 went from the top of the existing ground. They did not
23 go in accordance with the spec, which subsoil is
24 calculated from the top of base down to the bottom of
25 the excavation. I advised them of that. They have

1 never submitted any additional calculations.

2 Our case still rests on the fact did Kaiser
3 inspectors direct Hubbard field forces to overexcavate.
4 I asked you, Greg, did you ever tell Hubbard to
5 overexcavate plastic materials?

6 MR. HAYS: No.

7 MR. KOGER: As far as I know, in all cases that
8 are multi-line, it indicates that we paid them full
9 payment for vertical depth, not necessarily horizontal
10 depth, because there are horizontal depth limits for
11 muck excavation.

12 We did pay a hundred percent of the vertical
13 depth for muck, is that correct?

14 MR. HAYS: That's correct.

15 CHAIRMAN COWGER: Down to the template, plus
16 two-tenths?

17 MR. KOGER: Muck, there is no two-tenths
18 template.

19 CHAIRMAN COWGER: I missed the word muck, sorry.

20 MR. KOGER: Plastic material, like Greg has
21 stated, myself as a project engineer, I never directed
22 them -- as a matter of fact, I more than often
23 cautioned Mike Hill at the time, the project
24 coordinator, not to overexcavate plastic materials
25 because he would not be paid.

1 If you read the letter submitted by Hubbard in
2 here cautioning us about directing their field forces,
3 that letter was about overexcavation of plastic
4 material. It was something the contractor thought was
5 plastic. I knew it was muck. I told them to take it
6 out. It was muck.

7 He was -- the contractor, Mike Hill, the person
8 in charge on the project at this point in time, was
9 fully aware that they were not to be paid for
10 overexcavation beyond the vertical limits set in the
11 plans.

12 CHAIRMAN COWGER: Is there anything to document
13 that?

14 MR. KOGER: Yes, there's a letter in here that --

15 MR. DEYO: A letter dated February 22nd, the very
16 last item in here on quantity discrepancies that has
17 that.

18 MR. KOGER: I think if you go to Tab No. B-4.

19 CHAIRMAN COWGER: B like in Baker?

20 MR. KOGER: B like in Baker, the letter, if you
21 will -- it's just behind that.

22 CHAIRMAN COWGER: That's a letter from Hubbard.

23 MR. KOGER: That's a letter from Hubbard.

24 MR. DEMPSEY: That references plan changes.

25 MR. KOGER: The letter behind that dated

1 July 25th.

2 CHAIRMAN COWGER: What tab is that in?

3 MR. KOGER: No, I take that back. It's a letter
4 dated -- it's Tab B-5, and the letter is dated
5 March 13th.

6 CHAIRMAN COWGER: Of '96?

7 MR. KOGER: Of '95. This is right in the
8 beginning of the subsoil.

9 CHAIRMAN COWGER: Go ahead.

10 MR. KOGER: Hubbard was well aware of the fact
11 that they would not be paid for overexcavation of the
12 subsoil. This letter is the follow-up to the
13 directions received in the field from ICF Kaiser
14 regarding limits of subsoil excavation from station 67
15 to station 78.

16 Due to the composition of the material below the
17 muck in this area, additional subsoil excavation is
18 required to get to suitable soil.

19 Mike interpreted -- there was a muck elevation
20 that was clearly a peak muck, and there was a muck
21 elevation that was more like a plastic muck that had an
22 organic content of about 12 to 13.

23 Mike in this letter, referring to that is below
24 the muck, when it was actually muck. This action will
25 increase the plan quantity of subsoil excavation.

1 CHAIRMAN COWGER: But this was in an area where
2 they were digging muck, not where they were digging
3 clay?

4 MR. KOGER: That's correct, and we paid them to
5 the bottom of where they dug.

6 The bottom line, we are back to the crux of this
7 issue, did Kaiser direct Hubbard to overexcavate. No,
8 we did not.

9 If the Board wants to rule the fact that we were
10 present when we took the field shots, does that
11 constitute direction?

12 It's the Department's position that quality
13 control is the responsibility of the contractor. The
14 inspector has no authority to waive the clear and
15 explicit vertical and horizontal limits set out in the
16 specifications for plastic material. The inspector
17 cannot waive that right.

18 Verbally, as a matter of fact, the project
19 engineer can't waive it verbally. That's a
20 specification change and must be done by change order
21 or supplemental agreement. The contractor is well
22 aware of this.

23 I think payment issues I have explained. The
24 accuracy of quantities, I have explained that the
25 contractor has not submitted accurate quantities. If

1 you have any questions, I will be glad to answer.

2 CHAIRMAN COWGER: We will let the contractor come
3 back with a rebuttal of what you have said, but I have
4 one question. There was some discussion about in some
5 instances where they were excavating clay, when they
6 got to the template line, it turned out to be sort of a
7 slimy mixture of clay and muck.

8 There's an inference on the part of the
9 contractor that this is what caused them to
10 overexcavate in those areas, and that the inspector
11 condoned this.

12 Now, what do you all have to say about that?
13 Then we will let the contractor come back.

14 MR. KOGER: My response to that is if it was
15 muck, we directed them to take it out. If it's plastic
16 materials, we were silent. We never told them to clean
17 out any holes other than what is muck.

18 As a matter of fact, if you look at their own
19 documentation submitted the only place in their
20 documentation where it says they were directed to take
21 out additional material that's in a muck location, and
22 they were paid for that to a hundred percent of the
23 depth they excavated.

24 My inspectors knew what was plastic and what was
25 muck. If they had any questions, they came and asked

1 me.

2 CHAIRMAN COWGER: Let me ask your inspector about
3 that. Do you have any recollection of this where there
4 was any discussion in the field about excavation of the
5 materials that was this slimy material that I just
6 described?

7 MR. HAYS: Only in a couple of places that we
8 might be talking about. There was one in an area where
9 they call Mud Lake where they had a lot of muck, and we
10 have clay. As you go eastward away from Mud Lake, it
11 turns into a clay layer. Possibly right at that
12 juncture there may have been some confusion.

13 Then there was one additional spot on the west
14 project at what they call Bellows Outfall Canal,
15 Bellows Outfall Canal where they have the same thing,
16 muck, and right adjacent to that is a clay layer to the
17 east of that. And possibly right where they join
18 together there could have been some questions.

19 Other than those two spots, no.

20 MR. KOGER: Did you ever direct them to
21 overexcavate plastic material, Greg?

22 MR. HAYS: What happened with the plastic
23 material, which is the great majority here, we would
24 take joint shots at 50-foot intervals usually. We
25 would get -- do one 50-foot interval. The contractor

1 would continue.

2 We would get to the next 50-foot interval, take
3 the shots. We would be deep. And I would advise
4 Hubbard's people we are too deep, beyond the template,
5 we can't pay you for that. You need to get back up to
6 the template line.

7 I understand in using large equipment, but you
8 have to hold the tolerances. I told your people this
9 on many, many occasions.

10 MR. DEMPSEY: I understand what Greg says, but
11 Greg wasn't -- what percentage of the time were you out
12 there? I know there was numerous inspectors involved
13 from Kaiser.

14 MR. KOGER: I think if you look at the field book
15 notes, Greg is probably on three-quarters of the notes
16 in that book.

17 MR. WOLF: I think Greg can answer for himself.

18 MR. HAYS: I would say that's accurate,
19 two-thirds or three-quarters.

20 MR. DEMPSEY: When we were excavating, they were
21 asking to take the shot, you would know what was the
22 two-foot limit and you would advise our people we were
23 over the two-foot limit.

24 MR. HAYS: On the cross-sections of my plans
25 I would precalculate what the shot would be, my rod

1 reading is going to be to be exactly at that limit. We
2 would go ahead and take the shot, see where we were in
3 relationship to that. I could easily determine if we
4 were high, low, or on the mark.

5 MR. DEMPSEY: I know Dave used the word directed.
6 I'm sure you never told my people, you are directed to
7 take this out.

8 But in your recollection there is no instance
9 where we cleaned out and there was a little bit of,
10 whatever slime or muck? You didn't tell our people,
11 let's get the rest of that, let's see how deep this is?
12 There was none of that that ever went on?

13 That's what my folks tell me, that once we got to
14 the two-foot limit, there was -- sometimes if there was
15 a change in the character of material -- whether it was
16 you or not, I don't know, but some of the other
17 inspectors, they would say dig a little hole and see
18 where it's at. If it was another only six inches, our
19 folks were told, let's get it all, we're here, let's
20 clean it out.

21 You were never involved with anything of that
22 nature?

23 MR. HAYS: In digging the test holes?

24 MR. DEMPSEY: Right.

25 MR. HAYS: I can think -- I don't know the exact

1 location where we did dig a couple of holes to
2 ascertain that we really were -- there was nothing
3 below that that we wanted to go after.

4 MR. KOGER: Let me further clarify Greg's
5 statement. I think what you are referring to there is
6 areas where we had not started subsoil and we dug holes
7 to determine whether we were going to have to dig
8 subsoil or not, is that correct?

9 MR. HAYS: That's another instance. In certain
10 areas we ended up where we didn't do what we needed to
11 do. There was a class of material in a two-foot area
12 in the post office area so we deleted that.

13 I think probably in the first week of the job --
14 actually, this was a muck area, but right in the -- by
15 Bellows Outfall Canal, we dug a big hole in the muck
16 area to see what we were up against essentially.

17 MR. DEMPSEY: Greg, in your experience with our
18 folks out there, my people tell me -- was it your
19 experience that we always took shots before and after
20 when we would start excavations?

21 MR. HAYS: Before and after? Explain that.

22 MR. DEMPSEY: For quantity purposes that we would
23 take shots before and after we made the excavation of
24 the subsoil? We would take shots after?

25 MR. HAYS: When you say before shots, I believe

1 you are referring to the existing ground line. Yes, we
2 would take shots on the existing ground points so we
3 could determine what our box is and then once we would
4 cut the material out.

5 MR. DEMPSEY: Making a comment toward what Dave
6 said, that the contractor was responsible for quality
7 control. Well, there is a lot of truth in that, too,
8 but we are out here jointly. Like I say, this material
9 was changing.

10 Our people -- Randy Blankenship, Charlie Loy, my
11 folks were out there -- these are people in the field
12 doing the work. They were looking at it. There's no
13 benefit for Hubbard to overexcavate here. I think what
14 we took out we took out under their direction, under
15 their supervision.

16 No, we didn't have a letter or even a verbal
17 direction saying you are directed to remove it. It was
18 our understanding that it was bad material and we
19 removed it.

20 Dave mentioned change orders and stuff. We
21 processed change orders and SAs for every change out
22 there. I would like to think we partnered the job. We
23 did -- if we did change order stuff, we would all still
24 be out there.

25 To me this was a field decision made in the field

1 by the people who did the work. I wasn't there. All
2 we are doing is asking to get paid for what we did.

3 CHAIRMAN COWGER: Are we pretty well wrapped up?

4 MR. KOGER: I have one other thing I would like
5 to say. That is in the past 20 or so years I've been
6 dealing with subsoil excavation, there's been the
7 tolerance for vertical limits on plastic material. The
8 contractor does not get paid for the overexcavation.

9 It's typical in the process of doing that where
10 you get these slime pockets and the clay material that
11 for the contractor's benefit, he takes that additional
12 stuff out.

13 If you go and check the final estimate
14 quantities, and ever since we've been doing multi-line
15 for the last ten years, there's a calculation in there
16 for actual excavation and then pay quantity excavation,
17 and that difference ranges from 9 to 20 percent, if you
18 go back and look at job history.

19 This case would fall under the 10 percent
20 category, which is down on the low end, but for what
21 the contractor normally overexcavates for.

22 Tom Aldridge in Tallahassee has never paid for
23 overexcavation. Carl Turney in District 7 has never
24 paid for overexcavation of plastic material. I don't
25 think we want to start the precedence of doing it now.

1 MR. DEMPSEY: Dave, you bring up the issue, but
2 to my understanding there is no pay item for plastic
3 excavation. The pay item is subsoil. That includes
4 the whole gambit of unsuitable materials you encounter
5 in the field. It could be muck, peat, plastic,
6 numerous things.

7 MR. KOGER: The specifications are clear that
8 muck has tolerances, horizontal, no vertical. Plastic
9 has tolerances, both vertical and horizontal.

10 CHAIRMAN COWGER: I think we understand that
11 position. The question you had a minute ago, the
12 statement you made, sometimes if he's got slimy
13 material in the bottom of the cut, even though it's
14 below the required cut elevation, that the contractor
15 might clean it out anyway?

16 MR. KOGER: For his convenience, yes.

17 CHAIRMAN COWGER: Why is it for his convenience?

18 MR. KOGER: Because he's got to put good material
19 back in there, and he doesn't want that stuff squirting
20 back up through it.

21 CHAIRMAN COWGER: He doesn't want that material
22 coming back up through his good fill. All right.

23 On the average -- did I hear you say that the
24 quantity that's in question here, the 5,000 yards is
25 about 10 percent of the total subsoil excavation?

1 MR. KOGER: Yes.

2 CHAIRMAN COWGER: Okay.

3 MR. KOGER: On the 03 project.

4 MR. DEMPSEY: Is that correct?

5 MR. FADULION: Yes, about 10 or 11 percent.

6 CHAIRMAN COWGER: Anything else?

7 MR. FADULION: I just need to make a statement.

8 Dave Koger had said that the spec change, his
9 inspectors are not authorized to subvert specification
10 requirements.

11 We did not ever look at the depth adjustments in
12 the field as spec change. We have always read into
13 that portion of the specs that says subsoil is subject
14 to field variations. If they had to undercut or stop
15 short of the depth, that that was within the
16 specifications. So there's no change in specs as far
17 as we are concerned.

18 The quantity that we originally submitted to DOT
19 and ICF Kaiser for how much we felt we were underpaid,
20 yes, we had a little error in there where we made the
21 adjustment.

22 As far as that falling under the verifiable
23 quantity, that quantity can be double checked using the
24 DOT multi-line program. It's clearly shown on there
25 the survey, the plots of the survey information and the

1 limit. That difference is what we're looking to get
2 paid.

3 The only other thing I wanted to say is Greg Hays
4 had mentioned that many times he told our folks in the
5 field that we have gone too far and we were not going
6 to get paid.

7 At the DOT monthly cut-offs, we were never told
8 this, you ain't getting paid for this because that was
9 way past the limit and we told your folks.

10 CHAIRMAN COWGER: They waited a year later to cut
11 it off.

12 MR. FADULION: In the monthlies I was never told
13 that if we undercut we would never get paid.

14 MR. DEMPSEY: In kind of an overview of the job,
15 originally it was a tough job for everybody. It was
16 originally 600 days and it went 1200 or whatever.
17 I think as Dave said it's a testimony when you have six
18 million dollars of change orders there's a bunch of
19 shit that happens.

20 I think it was the Department and Hubbard, we
21 worked through all those issues, we settled all our
22 differences other than this one here. I think it says
23 a lot for the Department, a lot for Kaiser, and a lot
24 for my staff.

25 The bottom line is that the taxpayers of Florida

1 got a pretty damn good road they're riding on out
2 there. We are proud of it, and I know they are, too.

3 CHAIRMAN COWGER: Anything else, either party?
4 Mr. Roebuck, Mr. Deyo?

5 Okay, the hearing is hereby closed. The Board
6 will meet to deliberate on this claim in approximately
7 six weeks, and you will have our order shortly
8 thereafter.

9 (Whereupon, the hearing was concluded at 12:50 p.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 3rd day of September, 1999.



CATHERINE WILKINSON
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