

**STATE ARBITRATION BOARD**

1022 LOTHIAN DRIVE  
TALLAHASSEE, FLORIDA 32312  
PHONE: (904) 385-2852

*SCD 12-5-07  
MSW*

+ + + NOTICE + + +

In the case of Ila Construction Company, Inc. versus the Florida Department of Transportation on Project No. 93170-3507 E4292 in Palm Beach County, Florida, both parties are advised that State Arbitration Board Order No. 6-91 has been properly filed on September 13, 1991.

*H. E. Cowger*

H. E. Cowger, PE  
Chairman and Clerk, SAB

S.A.B. CLERK

SEP 13 1991

**FILED**

HEC/sfc

Copies of Order & Transcript to:

Rick Chesser, District SEcretary/FDOT

Rajendra U. Patel, President/Ila Construction Co., Inc.

STATE ARBITRATION BOARD

ORDER NO. 6-91

RE:

Request for Arbitration by  
Ila Construction Company, Inc. on  
Job No. 93170-3507 E-4292 (A Mini-Contract) in  
Palm Beach County

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

H. Eugene Cowger, P. E., Chairman  
Kenneth Morefield, P. E., Member  
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a  
request for arbitration commencing at 11:55 a.m., on Tuesday,  
July 16, 1991.

The Board Members, having fully considered the evidence  
presented at the hearing,, now enter their order No. 6-91 in  
this cause.

ORDER

The Contractor presented a request for arbitration of  
a multi-part claim for additional compensation in the amount  
of \$21,758.71 for extra work ordered by the Department and  
for additional costs incurred due to delays he alleged to  
have been caused by actions of the Department of  
Transportation.

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

PART I Amount Claimed: \$3,500.00

On the day our signalization mobilized on the project,  
we were informed by the Department of Transportation that he  
could not begin work because he had not been approved as a  
subcontractor. We demobilized and several days later, after  
obtaining approval of this subcontractor, re-mobilized.

It had been our experience on past mini-contract  
projects for the Department of Transportation to waive formal  
approval of subcontracts.

The amount claimed is our bid unit price for the  
Mobilization item.

PART II Amount Claimed: \$4,573.33

After they conditionally accepted the project, the Department of Transportation determined that a section of sidewalk and a section of curb we constructed was defective and directed us to remove and replace it. We contend that this work conformed to the plans and specifications.

PART III Amount Claimed: \$100.00

We installed a school crossing sign as shown in the plans and as instructed by the Department's inspector. Later, we were instructed to relocate this sign. The amount claimed is our bid unit price for the item Relocate Existing Sign.

PART IV Amount Claimed: \$2,100.06 The Department of Transportation delayed final inspection of the project for several days after conditional acceptance and we were then ordered to do the corrective work which is the subject of PART II of this claim. During that 18 day period (February 11, 1988 through February 29, 1988), we were required to maintain traffic on the project.

The amount claimed was calculated based on a per day cost determined by dividing our bid unit price for the item Maintenance of Traffic (\$3,500) by the number of contract days allowed (30).

PART V Amount Claimed: \$5,964.45

We were delayed in prosecution of the work by:

- a. Failure of the Department of Transportation to approve required submittals for traffic signalization equipment in a timely manner.
- b. The Department directing us to not begin work on the project until our signalization subcontractor was formally approved (See PART I).
- c. Failure of the Department to make a final inspection of the project in a timely manner.
- d. The instructions issued by the Department to perform corrective sidewalk and curb work (See PART II).

The Department of Transportation granted an extension of the allowable contract time, based on the delay in approval

of our submittals covering traffic signalization components, but refuses to recognize this as a compensable delay.

We claim field and home office overhead for the periods:

- a. Between the date on which contract time charges began and the date we were able to begin work.
- b. Between the date of conditional acceptance of the work and the date we completed the corrective work ordered by the Department.

PART VI Amount Claimed \$5,520.87

We are entitled to interest at the rate of 1% per month on the aggregate amount claimed in PARTS I through V of this claim from the date we made formal demand for additional compensation (approximately June 1, 1988) until the date we filed a request for arbitration (approximately March 31, 1991). This is a period of 34 months.

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

PART I

The firm that actually performed the signalization work on the project was not the same firm the contractor announced at the preconstruction conference was to be his signalization subcontractor. On the day he mobilized on the project, in addition to not having requested approval of his signalization subcontractor, the Contractor had not submitted a Maintenance of Traffic plan for approval. The contract requires that both of approvals be obtained prior to commencing work.

PART II

We are submitting photos showing the condition of the curb and the sidewalk we found to be defective. The deficiencies consisted of lack of expansion joints where the new curb connected to the existing curb, lack of an expansion joint between the new curb and the new sidewalk, poorly aligned sawed joints in the sidewalk, depressions in which water ponded and an inadequate broom finish on the sidewalk.

## PART III

Common sense should have dictated not installing a sign directly in front of a pedestrian crossing signal.

## PART IV

We do not agree that any compensation is due for this part of the claim. In any event, however, compensation should not exceed payment for the construction traffic control devices that were in placed during the 23 days period when the work was delayed awaiting approval of the submittals covering traffic signalization components. We calculate this to be \$1,254.00.

## PART V

We offered to grant a 23 day extension of the allowable contract time based on untimely approval of the submittals covering traffic signalization components. This offer was conditioned on the Contractor agreeing to not pursue a further claim, financial or otherwise, in connection therewith.

It is our position that the overhead costs claimed by the Contractor are not compensable under the contract. In any event, compensation for overhead during the period preceding the date on which the Contractor mobilized on the project (January 8, 1988) is clearly not justified.

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

## PART I

The special provisions stated that requests to sublet work shall be approved by the Project Engineer. The Department testified that it was a management decision to approve these requests in the District Office. The intent here was to control paperwork processing in an attempt to control brokering.

Even though the Contractor did not submit a maintenance of traffic plan at the preconstruction conference, the Department did not raise the issue until the day on which the

Contractor mobilized to begin work on the project.

PART IV

It appears that the maintenance of traffic costs incurred by the Contractor subsequent to conditional acceptance of the project essentially consisted of construction zone signing.

PART V

The Contractor claimed job site overhead costs for a period of time which preceded his mobilizing on the project.

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

The Department of Transportation is directed to release all assessed liquidated damages and reimburse the Contractor for his claim as follows:

PART I	\$2,000.00	PART IV	\$1,000.00
PART II	\$2,500.00	PART V	\$3,000.00
PART III	\$ 100.00	PART VI	\$2,924.00

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 225.00 for Court Reporting Costs.

S.A.B. CLERK

SEP 13 1991

FILED

Tallahassee, Florida

Dated: 10 September 1991

Certified Copy:

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

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

  
 Kenneth Morefield, P. E.  
 Member

  
 John P. Roebuck  
 Member

10 September 1991  
 Date

STATE ARBITRATION BOARD  
STATE OF FLORIDA

S.A.B. CLERK

SEP 13 1991

FILED

ILA CONSTRUCTION CO., INC. )  
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DEPARTMENT OF TRANSPORTATION )  
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PROJECT NO. 93170-3507 E4292

LOCATION: Palm Beach County,  
Florida

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Tuesday, July 16, 1991

PLACE: S.A.B. CLERK  
1007 Desoto Park Drive  
Tallahassee, Florida

TIME: SEP 13 1991  
FILED  
Commenced at 11:55 a.m.  
Concluded at 1:00 p.m.

REPORTED BY: LAURA MOUNTAIN  
Court Reporter  
Notary Public in and for  
the State of Florida at  
Large

WILKINSON & ASSOCIATES

Certified Court Reporters  
P.O. BOX 13461  
Tallahassee, Florida 32317  
904-224-0127



THE RECORD NEVER FORGETS

1 APPEARANCES:

2

3 APPEARING ON BEHALF OF THE STATE ARBITRATION BOARD:

4 Mr. H. E. "Gene" Cowger, Chairman  
5 Mr. Ken Morefield  
6 Mr. John "Jack" Roebuck

6

7 APPEARING ON BEHALF OF THE CONTRACTOR:

7

8 Mr. Rajendra U. Patel  
9 Patrick B. Calcutt, Esquire

9

10 APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

10

11 Mr. Robert H. Bourdon  
12 Mr. Alan K. Parmalee  
13 Mr. Isiah S. Clark  
14 Nancy J. Aliff, Attorney at Law

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I N D E X

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EXHIBITS

PAGE

20

Exhibit Nos. 1 and 2 in evidence

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21

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CERTIFICATE OF REPORTER

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P R O C E E D I N G S

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

Mr. Ken Morefield was appointed as a member of the Board by the Secretary of the Department of Transportation. Mr. Jack Roebuck, John Roebuck, was elected by the construction companies under contract to the Department of Transportation.

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

Our terms of office began July 1, 1991 and expire June 30, 1993.

Will all persons who intend to make oral presentations during this hearing please raise your right hand to 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 No. 1. This consists of the contractor's request for arbitration and all of the information that was enclosed in that booklet. DOT has had this information now since approximately June 1 for their

1 review.

2 Does either party have any additional information  
3 it wishes to put into the record as an exhibit?

4 (Off the record)

5 CHAIRMAN COWGER: During the time that we were  
6 off the record, the Department of Transportation  
7 presented an additional exhibit which will be  
8 identified as Exhibit No. 2. The lead document is  
9 minutes of preconstruction meeting, September 17th,  
10 1987, with numerous other documents attached thereto.

11 All parties and the Board members have a copy of  
12 this exhibit in front of them.

13 Does either party desire any additional time to  
14 examine Exhibit No. 2?

15 Hearing nothing, we will proceed on.

16 (Whereupon, Exhibit Nos. 1 and 2 were received in  
17 evidence.)

18 During this hearing the parties may offer such  
19 evidence and testimony as is pertinent and material to  
20 the controversy and shall produce such additional  
21 evidence as the Board may deem necessary to an  
22 understanding and determination of the matter before  
23 it.

24 The Board shall be the sole judge of the  
25 relevance and materiality of the evidence offered.

1           The hearing will be conducted in an informal  
2 manner. The contractor will elaborate on their claim  
3 and then the DOT will offer rebuttal.

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

7           The contractor can now proceed with his  
8 presentation. As we move through this, if possible,  
9 I would suggest that we try to stop item by item and  
10 let DOT rebut.

11           For instance, when you come to the end of the  
12 mobilization claim, let's stop and let them rebut.  
13 Proceed, please.

14           MR. CALCUTT: I am Patrick Calcutt with Cummings,  
15 Lawrence & Vezina. We're here representing the  
16 contractor on this FDOT project, State Road 717.

17           This is Rajendra Patel, president of Ila  
18 Construction Company.

19           To briefly summarize, this claim is for delays  
20 and extra work associated with this project. The  
21 delays arise primarily from delays in approving Ila's  
22 materials submittals and delays associated with the  
23 approval of Ila's subcontractor, American Lighting &  
24 Signalization.

25           There are also two extra work items. Ila was

1 required to break up and redo concrete, curb, sidewalk,  
2 and gutter, and Ila was required to relocate a sign.  
3 Both items of work had been performed according to the  
4 plans and specifications in the drawings and the  
5 instructions of the project engineer. Ila claims  
6 compensation for these extra work items.

7 On the individual items of compensation are  
8 demobilization, remobilization, maintenance of traffic  
9 for the extended contract period, overhead and profit  
10 on the above and prejudgment interest computed from  
11 June 1, 1988.

12 I will at this time turn the presentation over  
13 to Mr. Patel who will explain point by point the  
14 individual claim items.

15 CHAIRMAN COWGER: Mr. Patel, could I interrupt  
16 you just a moment, please, sir.

17 MR. PATEL: Sure.

18 CHAIRMAN COWGER: The scope of this work, looking  
19 at these plans, is primarily installation of a traffic  
20 signal with some minor amount of sidewalk and curb  
21 construction and a little bit of grassing and a little  
22 bit of earth work, is that correct?

23 MR. PARMALEE: And striping.

24 CHAIRMAN COWGER: Pardon?

25 MR. PARMALEE: And striping.

1 CHAIRMAN COWGER: And striping. All right, sir.

2 MR. PATEL: That is correct.

3 CHAIRMAN COWGER: Go ahead.

4 MR. PATEL: To start with, this particular  
5 mini-contract was signed by the district on August  
6 27th, 1987. Usually the correspondence between the  
7 District 4 office to my home office has always been  
8 delayed by more than ten days in the mail. We have  
9 not really tracked the reason for that, but the  
10 mini-contract was received on like the 10th of  
11 September.

12 We were given the preconstruction meeting  
13 notification on, I believe, the 14th or 15th of  
14 September. We had a preconstruction meeting on the  
15 17th of September.

16 And again, before I go back into the  
17 preconstruction detail, I would like to point out the  
18 fact that the mini-contract concept had been prevailing  
19 in various district to expedite the approval process  
20 and not even in fact go into the approval of the  
21 contractor, subcontractor, or the material required on  
22 the job.

23 The mini-contract concept has been prevailing in  
24 all of that district for the same purpose and idea.  
25 But we found, as you will notice from the subsequent

1 evidence, that this particular district acted  
2 differently and they acted as if the mini-contract  
3 should be given a major job contract.

4 However, the fact remains that, prior to doing  
5 this particular job, we had done another five  
6 mini-contracts in this particular district and nowhere  
7 on those particular projects we were requested to  
8 submit any approval for the subcontractor or the  
9 material required on the job.

10 We moved on the job site expeditiously and we  
11 completed most of those jobs also in time limit or time  
12 frame required.

13 This particular job, which required the  
14 signalization items, most of the time the signalization  
15 items, the Department always have given 90 days  
16 procurement time, especially if any prestressed poles  
17 are involved on the job.

18 There was no time allowance was made in the  
19 mini-contract contract document for the procurement  
20 time. The preconstruction meeting, we brought a lot  
21 of things out to them and we gave them the name of the  
22 subcontractors.

23 We also told them that it would take 90 days to  
24 get the procurement of poles that we need as specified  
25 on the project, and we should be granted such time.

1           They granted us, in lieu of 90 days, we were  
2           given only 60 days to start with. According to the 60  
3           days time frame that drew us a starting date on  
4           December, I believe, 12th.

5           Prior to starting, we are also required -- we  
6           were required to have the approval of all the materials  
7           in our hands from the Department. We submitted the  
8           approval documents to the Department, I believe, in  
9           November, I believe, either 11th or 6th. The 6th of  
10          November we sent the Department the copies of the  
11          material sheets and whatnot for the approval.

12          We waited from the Department traffic engineer  
13          for the approval to get back so that we can proceed on  
14          the job without any delay.

15          The approval never got back to us and in the  
16          latter part of the first week of December we contacted  
17          the Department traffic engineer who normally approves  
18          the material and we found out that the guy who approves  
19          the material is in China someplace on vacation.

20          So we try to find out who can substitute and who  
21          can give us the approval. Nobody was willing to take  
22          or give the responsibility of the approval.

23          In the first week of January we contacted the  
24          individual who came back from the vacation and we told  
25          them the serious nature of the business and we told

1           them that we want to start this particular job and this  
2           job only had so much time allowed and whether he will  
3           allow us to proceed on the job just on verbal approval,  
4           which he did.

5                     But the formal approval actually came to us on  
6           January 22nd.

7                     Meanwhile, we informed the project engineer that  
8           we would proceed with our job starting on January 8th.  
9           Our subcontractor, our personnel and everybody was  
10          mobilized to move on the job on January 8th.

11                    On January 8th already my subcontractor was on  
12          the job, my personnel were in the process of moving the  
13          backhoe, the loader and all the other equipment  
14          required to remove the sidewalk or whatever was  
15          necessary to do the earth work, and we also had  
16          mobilized the traffic control subcontractor to install  
17          all the signs and everything else that would be  
18          required.

19                    The traffic control contractor was going to be  
20          over there by nine o'clock, but by 8:15 the project  
21          engineer stopped my subcontractor from doing any work  
22          on the job site. They told them that they are not  
23          approved subcontractor.

24                    Subsequently I phoned my personnel out there to  
25          stop any proceeding on the job and told them to wait



1           until further notification.

2                   On January 15th we received a certified mail  
3           letter from James Byron, who was acting resident  
4           engineer in District 4 at the time, for this particular  
5           area, and he wanted to have a prestart meeting on,  
6           I believe, January 28th, somewhere around there, to  
7           find out how we are going to proceed with the job and  
8           whatnot.

9                   So at that time -- meanwhile, we already had been  
10          doing all the paperwork required to get the approval of  
11          the subcontractors. The approval of the subcontractor  
12          paperwork was carried out expeditiously and hand  
13          submitted to the district office, the district  
14          construction office in time. And we wanted them to  
15          get the approval done right there and then because we  
16          were already behind the schedule on this particular  
17          job.

18                   The approval never came; but, however, in the  
19          meeting with the resident engineer, Mr. Jim Byron,  
20          he said, proceed with the job, I give you my verbal  
21          approval. This was given on January 20th.

22                   On January 22nd, we started the job, moved the  
23          subcontractor and us on the job site, and we tried to  
24          carry out the work in normal fashion.

25                   All of the work items were completed as of

1 February 11th. It only took us about 19 to maybe 20  
2 days to complete the entire project.

3 On January 11th, we were told by the project  
4 engineer and project engineer's boss that the job may  
5 be a certain job, as it is conditionally based on our  
6 verbal agreement and whatnot.

7 They also gave us a punch list item at that time  
8 to correct a few of the traffic signal problems which  
9 subsequently was mailed to us. Again, that was late.  
10 We received the damn thing on -- like February 26th or  
11 whatever.

12 And when we inform our subcontractor, they  
13 ultimately corrected them in March, the first week  
14 of March.

15 Again, when the conditional approval was already  
16 carried out on the 11th of February, then they said --  
17 then they called me and they said that they are going  
18 to have another review of the job site, with maybe  
19 involving no other personnel from the Department of  
20 Transportation.

21 Normally on the mini-contract, the approval from  
22 the project engineer and project engineer's boss  
23 becomes final and you don't need any further approval  
24 from that point on. This is true on a mini-contract.

25 But on this particular job, the Department had

1           everybody showed up on the job. I believe there were a  
2           total of eight people from the Department of  
3           Transportation trying to microscope the job crew. And  
4           they just worked hard to find anything that could be  
5           wrong on the job.

6           So what they found wrong was the sidewalk and the  
7           curb and gutter, according to the standard, would not  
8           give what they liked. What they liked and what the  
9           project engineer and the project manager liked were two  
10          different things. So we have to redo that particular  
11          punch item back again.

12          The claim was the curb and gutter was not  
13          installed right and it retained a little bit of water.  
14          It retained a little bit of water because the existing  
15          curb and gutter did not really match the DOT standard.

16          And we had to modify -- we were asked to do the  
17          job as per DOT standard, but the DOT standard cannot  
18          match the existing curb and gutter.

19          So we were in limbo about who exactly is telling  
20          us what. So we finally carried out the correction  
21          work. And the correction work was carried out at extra  
22          cost to us. Again, we had to remobilize, it cost us  
23          money to do any corrections.

24          And our basic claim is here really involving  
25          the -- on the mini-contract concept, you don't really

1 ask for a subcontractor approval. We already had  
2 carried out five jobs before in the same particular  
3 district involving the same personnel, almost, where no  
4 approval was required.

5 On this particular job, somehow or the other,  
6 they wanted to crucify us or whatever, but they stopped  
7 us, we had to remobilize, we had to redo a lot of the  
8 work, and our claim is for all that extra work we had  
9 to do.

10 CHAIRMAN COWGER: May we stop at this point now  
11 and let DOT rebut. But before we do that, I have got  
12 a couple of questions. The submittal documents that  
13 you transmitted to the Department on November 6th, 1987  
14 consisted of essentially what?

15 MR. PATEL: Essentially consisted of the major  
16 items involving the signal work, the cable, the poles  
17 and all the miscellaneous items involving the signal  
18 work.

19 CHAIRMAN COWGER: DOT, at the time those  
20 documents were submitted, were they reasonably  
21 complete? Did you have to go back and ask for  
22 additional information?

23 MR. BOURDON: To my knowledge, there was no  
24 additional information other than there was a couple of  
25 telephone discussions about some minor points. But the

1 documents, as submitted, were approved.

2 CHAIRMAN COWGER: Dot, the contractor -- the  
3 contract was executed on August 27, 1987. You made the  
4 submittal to DOT on November 6th, 1987.

5 MR. PATEL: That is correct.

6 CHAIRMAN COWGER: Why so long?

7 MR. PATEL: Because the procurement time, we were  
8 not really so sure, when we really got around trying to  
9 procure all the material, we actually then physically  
10 got the cuts on the poles and things like that.

11 You order all the material and then you wait for  
12 the cuts and things like that and you don't want to  
13 submit a partial package. So we had to wait until we  
14 got all the drawings in our bags and at that time the  
15 complete package was submitted to them.

16 CHAIRMAN COWGER: So the basic answer is that it  
17 took you that long to get all the components assembled.

18 MR. PATEL: That's correct.

19 MR. BOURDON: May I respond to that?

20 CHAIRMAN COWGER: Yes, sir.

21 MR. BOURDON: The preconstruction minutes are  
22 very clear as to what Mr. Patel's subcontracting  
23 intentions were on the signalization. The request at  
24 that time or statement was Signal Construction was  
25 going to be doing their signalization work.

1           It ended up that American Lighting was the  
2 subcontractor, so I suggest that there was a problem  
3 in negotiating costs; that that was the potential  
4 problem of the delay.

5           CHAIRMAN COWGER: Before you respond, Mr. Patel,  
6 as I understand it, the subcontractor who was to do the  
7 signalization work that was announced at the  
8 preconstruction conference was not in fact the one  
9 that actually did the work?

10           MR. BOURDON: That is correct.

11           CHAIRMAN COWGER: Mr. Patel?

12           MR. PATEL: The Department was given three names,  
13 and they were told that either Signal Construction,  
14 American Lighting, or Transportation Safety  
15 Contractors, any of the three of them might wind up  
16 doing the job.

17           I also mentioned to them at this time the Signal  
18 Construction Company quotation looked lucrative to me  
19 and maybe I will hire them, depending on how fast they  
20 were going to do the work. And by next week I found  
21 out that the American Lighting were capable of doing  
22 the job in a timely manner that we liked and we  
23 ultimately gave them the job in spite of the fact  
24 that that bid was slightly higher than the Signal  
25 Construction.

1           CHAIRMAN COWGER: I think that's all we need on  
2 that. DOT, are you not disputing the fact that there  
3 was a substantial delay in approval of the submittal?

4           MR. BOURDON: The Department, in a letter --  
5 I don't have the date right ready at hand, but the  
6 Department did offer Mr. Patel a time extension due to  
7 the certification of materials. He never signed the  
8 certification or the request for time extension that  
9 was offered to him and therefore the time was never  
10 provided to him.

11           CHAIRMAN COWGER: But you are not disputing the  
12 fact --

13           MR. BOURDON: No, sir.

14           CHAIRMAN COWGER: -- that there was a substantial  
15 delay at the fault of the Department in the approval of  
16 the submittal documents?

17           MR. BOURDON: In the up-front part of the  
18 contract, yes, sir.

19           CHAIRMAN COWGER: And that it was, in fact,  
20 sometime well down into January before you approved  
21 them?

22           MR. BOURDON: The actual submittal was made and  
23 approved, I believe, the 29th of January, was the  
24 documentation I'm looking at. That's in relation to  
25 the time extension that's in your package.

1 MR. ROEBUCK: Mr. Patel, you said the 22nd.

2 MR. PATEL: The 22nd is the date when the project  
3 engineer and the traffic control engineer signed the  
4 document with the approval, and then the same day he  
5 called me, that he is signing the document on approval.  
6 That's the reason why I'm saying that it was approved  
7 on the 22nd, and that's our knowledge.

8 However, the formal receiving of those documents  
9 was --

10 CHAIRMAN COWGER: I think we've got enough  
11 information on that. Let me ask another question.  
12 DOT, what does the contract specifically say about  
13 approval of subcontractors?

14 MS. ALIFF: On page three of the contract, it's  
15 addressed in specification 1.6, it requires approval of  
16 all subcontractors.

17 MR. ROEBUCK: That's in the mini-contract?

18 MS. ALIFF: That's in the mini-contract for this  
19 particular project.

20 CHAIRMAN COWGER: I have turned to the page of  
21 the subcontract that Ms. Aliff refers to and I note  
22 that it says something interesting; that the  
23 subcontracting shall be approved by the project  
24 engineer.

25 Was that in fact done or was it required that it



1 be approved by the district office?

2 MR. BOURDON: The formal procedure of using the  
3 district office was used on this project and all  
4 projects. I think it's interesting that Mr. Patel  
5 indicates that he was never required to use  
6 subcontractor approvals on any of his other projects  
7 when in fact one project that is in litigation at this  
8 point, one of the major problems was his subcontracting  
9 paperwork and how it was processed on the job prior  
10 to -- and I believe the date was approximately six  
11 months earlier.

12 The knowledge of not knowing that it was required  
13 in the formal process through the district offices is  
14 not quite a clear statement.

15 MR. PATEL: Let me point out the fact that that  
16 particular job had a special requirement and that  
17 involved quite a bit of completely different needs than  
18 what this project calls for.

19 CHAIRMAN COWGER: I don't think that the Board is  
20 interested in hearing that particular aspect of it.  
21 The Board is interested, though, in finding out why the  
22 Department determined that this approval had to be at  
23 the district office level when the contract clearly  
24 said it could be done by the project engineer.

25 MR. BOURDON: It was a management decision that

1 the Department made in the Fourth District, and I can  
2 only speak for the Fourth District, for the control of  
3 the paperwork processing to eliminate or to potentially  
4 eliminate brokering or to try to control it.

5 CHAIRMAN COWGER: Okay, that's all the questions  
6 I had before DOT begins their rebuttal. Mr. Roebuck,  
7 Mr. Morefield, either one of you all have any questions  
8 at this point?

9 MR. ROEBUCK: The delay substantially occurred  
10 after the project practically started and then the  
11 approvals came up, right? And at that point it was the  
12 subcontractors approval that was mainly hanging out?

13 MR. BOURDON: That was a portion of the delay  
14 that has been addressed by Mr. Patel on I believe the  
15 8th of January.

16 MR. ROEBUCK: The 8th of January. So he was  
17 right close to getting approvals at that time?

18 MR. BOURDON: That's correct.

19 MR. ROEBUCK: You thought he was in the clear,  
20 but he didn't have the sub approval.

21 MR. BOURDON: There were other reasons that I  
22 will cover.

23 CHAIRMAN COWGER: Okay, are you through, Jack?

24 MR. ROEBUCK: Yeah.

25 CHAIRMAN COWGER: I think that we need to let DOT

1 make a connected statement now.

2 MR. BOURDON: On the mobilization aspect or the  
3 remobilization claim, the Department's position is that  
4 in fact American Lighting approval was delayed and that  
5 has been acknowledged in our time extension letter  
6 offered to Mr. Patel and in fact the Department offers  
7 to clear all liquidated damages on the project, which,  
8 I believe, were 23 days.

9 But a major point that needs to be kept in  
10 perspective is the reason -- besides the subcontractor  
11 approval -- that Mr. Patel was requested to cease  
12 working on the project involved a letter dated  
13 11-8-88 -- I'm sorry, January 11th, '88 written by the  
14 project engineer, Mr. Parmalee, advising Mr. Patel of  
15 unauthorized work on the project, which included the  
16 lack of subcontractor approval, American Lighting.

17 But most importantly, in the second paragraph --  
18 and I will read it. It's short. "Also it will be  
19 necessary for you to submit a maintenance of traffic  
20 plan (I refer you to the state of Florida Manual of  
21 Traffic Control and Safe Practices) to me. Approval of  
22 said plan and the proper placement of the appropriate  
23 signs and high intensity lights will be required before  
24 any work is done."

25 That letter, again, was sent out on the 11th of

1           January. The Department did not receive a response  
2           from Mr. Patel until a handwritten response, which is  
3           also in your package, and it is dated the 20th of  
4           January, 1988, and it is a maintenance of traffic plan  
5           modified case 23.

6                     That is the primary reason, not trying to  
7           underestimate the subcontractor approval, but the  
8           maintenance of traffic plan was one of the primary  
9           reasons he was requested to suspend the project.

10                    MR. PATEL: Can I get back, at this point, very  
11           quickly?

12                    CHAIRMAN COWGER: Let me -- is that all you are  
13           going to say about the maintenance of traffic plan?

14                    MR. BOURDON: As far as the remobilization item,  
15           I think that would be it. We do not see a compensation  
16           for the maintenance of traffic or remobilization  
17           because of those two points.

18                    CHAIRMAN COWGER: All right, Mr. Patel.

19                    MR. PATEL: At each and every preconstruction  
20           meeting, the traffic control plan has always been  
21           outlined. And this in this particular case, it was  
22           done verbally, how we were going to do the traffic  
23           plan, and it was explained to them, with the help of  
24           the Department's traffic manual, how we were going to  
25           do that. No formal approval was requested.

1 MR. MOREFIELD: Can I ask a question? The  
2 mini-contract procedures, specs, did it say provide a  
3 written traffic control plan prior to commencement of  
4 work?

5 MR. BOURDON: It is a required object of  
6 submittal at the preconstruction meeting. Mr. Patel  
7 did not submit it at the preconstruction meeting. The  
8 prior case is in evidence of where he did that on a  
9 prior mini-contract.

10 MR. MOREFIELD: Was it verbally discussed?  
11 I don't see it in the minutes, but I haven't read it  
12 totally. But was it discussed?

13 MR. PARMALEE: It wasn't covered in the minutes.  
14 I don't know what --

15 MR. MOREFIELD: The second point is Signal  
16 Construction is noted in the minutes, who is going to  
17 do the signalization. At what point did you know  
18 American was going to be doing that? I know at the  
19 point that he showed up out there, but how soon before  
20 or is that when you knew American was going to be the  
21 subcontractor, when he showed up out there?

22 MR. CLARK: Yes.

23 MR. MOREFIELD: Okay. So you all believe --

24 MR. PARMALEE: At this point in time, I don't  
25 recall. There may have been some verbalization that

1 American was going to be doing the work, but I don't  
2 recall what time that was.

3 MR. MOREFIELD: But you all believe -- as he  
4 said, he submitted one of three. But you all believed  
5 it was going to be Signal? When you left the  
6 preconstruction conference, did you believe it was  
7 going to be Signal?

8 MR. CLARK: Right. It was unconfirmed, but it  
9 was going to be Signal Construction.

10 MR. MOREFIELD: Was Signal preapproved at that  
11 point?

12 MR. CLARK: No.

13 MR. BOURDON: No, not in the Department's mind.  
14 A formal submittal would be required.

15 MR. MOREFIELD: Was any of the three? None of  
16 the three was approved; Signal, American and Brand X,  
17 whoever --

18 MR. BOURDON: There were only two that were  
19 physically noted in the preconstruction minutes. That  
20 was Oglesby, which was going to do the striping, and  
21 Signal Construction was going to the signalization in  
22 the preconstruction minutes.

23 Both of those generically were approved as a  
24 subcontract approval. After the 8th it came to a head  
25 on the lack of submittal of paperwork.

1 MR. MOREFIELD: Thank you.

2 CHAIRMAN COWGER: Am I to -- going back a moment  
3 to the approval of the request to sublet work to --

4 MR. ROEBUCK: American.

5 CHAIRMAN COWGER: -- American. When was that in  
6 fact approved? I note the contractor went to work on  
7 January 22nd. Was it approved then?

8 MR. BOURDON: It is in your package. It was  
9 submitted to the Department for American Lighting dated  
10 1-11-88, which was after the project engineer's letter  
11 was provided. It was approved on 1-26-88. There was  
12 also a request submitted on 1-22-88 for Oglesby  
13 Construction Company and it was approved on 1-26-88.  
14 The verbal approval, to my recollection, that was  
15 referred to, as granted by the resident engineer, was  
16 for Oglesby Construction that came out of the meeting  
17 of 1-28-88 with Mr. Patel.

18 CHAIRMAN COWGER: What did Oglesby do on the  
19 job?

20 MR. BOURDON: Did the signing.

21 MR. PARMALEE: The striping.

22 MR. BOURDON: Just the striping. I'm sorry.

23 CHAIRMAN COWGER: DOT, have you completed your  
24 statements up to this point?

25 MR. BOURDON: On the remobilization, yes, sir.

1 Mr. Patel did go a little bit over, but I tried to stay  
2 within the remobilization issue.

3 CHAIRMAN COWGER: Now I believe that we're ready  
4 now to -- oh, no, before we leave remobilization, I  
5 wanted to ask a question of the contractor.

6 As I understand what you are claiming for the  
7 item of remobilization is the amount that you bid for  
8 mobilization on the contract.

9 MR. PATEL: That is correct.

10 CHAIRMAN COWGER: You bid \$3500, and you are  
11 claiming that entire amount.

12 MR. PATEL: That's correct.

13 CHAIRMAN COWGER: What cost did you in fact  
14 include when you bid in that --

15 MR. PATEL: When I am moving, my subcontractor,  
16 when he is moving a big crane to install the pole, for  
17 example, he is moving in with the trucks. We are  
18 moving in with the big trailer and the tractor-trailer  
19 to move the backhoe and the loader on the job site.

20 That's a \$2,000, \$2500 expense right there, just  
21 to move in from a remote location just like if they  
22 were moving in from the Tampa area to the job site and  
23 we were moving in from the Daytona Beach area. Plus,  
24 in order to mobilize all my people to stay down there,  
25 things like that, and all that adds up the cost.



1           CHAIRMAN COWGER: How much did you say it cost to  
2 mobilize that crane?

3           MR. PATEL: Just to mobilize the crane, itself,  
4 is \$1500.

5           CHAIRMAN COWGER: \$1300?

6           MR. PATEL: \$1500.

7           CHAIRMAN COWGER: \$1500. I'm sorry.

8           MR. PATEL: To move the tractor and the loader  
9 with the tractor-trailer, it costs another \$1200.

10          CHAIRMAN COWGER: Where in the contract did you  
11 include the cost of your bond and insurance and that  
12 sort of thing?

13          MR. PATEL: The cost of the bond and the other  
14 things are included as part of the other pay items  
15 which were marked up from the subcontractor's price --

16          CHAIRMAN COWGER: You distributed them over the  
17 other pay items, is the answer?

18          MR. PATEL: That is correct.

19          CHAIRMAN COWGER: That's all the questions I had  
20 in regard to that. Now, I think that we can leave the  
21 remobilization item now. Does anybody have any further  
22 thing to say about that?

23          Let's talk about the sidewalk, then. DOT, I  
24 think that we have heard the contractor's opening  
25 statement on that. What do you have to say about the

1 sidewalk?

2 MR. BOURDON: I will only make one simple  
3 statement and then I'll turn it over to the project  
4 engineer who was out there. The Department's position  
5 is that the work on the sidewalk, as Mr. Patel has  
6 classified as extra work, was not extra work. It was  
7 required to be done to provide the finished product in  
8 an acceptable form. And I will turn it over to the  
9 project engineer.

10 MR. PARMALEE: I was out there and I saw the  
11 product of both the sidewalk and the curb and gutter.  
12 I was dissatisfied with the work and I took pictures  
13 of the work, which I have copies of here, and I would  
14 like to present them as a presentation to the Board.

15 CHAIRMAN COWGER: Do you have more than one set?

16 MR. PARMALEE: Yes, I have a set for the  
17 contractor with a Xerox copy and I'll give you a set  
18 with the Xerox copies, too. It has the dates that I  
19 took the pictures and a description of what I was  
20 doing. It shows the sidewalk and the curb and gutter  
21 and substandard work as I determined it at the time.

22 CHAIRMAN COWGER: Mr. Parmalee, let me ask you a  
23 question, now. These pictures were taken of the curb  
24 and gutter and sidewalk that you considered not in  
25 accordance with the contract?

1 MR. PARMALEE: Correct.

2 MR. ROEBUCK: The workmanship or the sections or  
3 what was it?

4 MR. PARMALEE: It was workmanship. There's  
5 11 total pictures, three pages.

6 CHAIRMAN COWGER: Let me ask you a question.  
7 Picture number seven is a picture of a driveway  
8 connection that was made, apparently. Is that the --

9 MR. PARMALEE: It's not a driveway, it's a  
10 wheelchair ramp. This is a bicycle improvement. It's  
11 usually bicycles that the school children would use  
12 going back and forth across the street to the school.

13 CHAIRMAN COWGER: That's one item of work. Is  
14 that bicycle ramp, you might say, on either side of the  
15 street, I assume?

16 MR. PARMALEE: Correct.

17 CHAIRMAN COWGER: What other work was involved  
18 in the sidewalk?

19 MR. PARMALEE: There's a foot bridge on picture  
20 number seven, if you could extend the picture to the  
21 left, there's a foot bridge, and the sidewalk goes to  
22 the foot bridge across the canal.

23 CHAIRMAN COWGER: And we see evidence of that in  
24 some of the other pictures.

25 MR. PARMALEE: Correct.

1           CHAIRMAN COWGER: That's it?

2           MR. PARMALEE: Across the street there would be a  
3 cut ramp and some curb and gutter, also. That's a  
4 school site across the street, as you can see in  
5 picture number eight.

6           CHAIRMAN COWGER: How much of this was required  
7 to be removed, everything or just parts of it?

8           MR. PARMALEE: I don't understand what you mean.

9           CHAIRMAN COWGER: Well, the portion that went  
10 across, the bridge portion, the portion that went  
11 across --

12          MR. PARMALEE: I believe it was all removed. We  
13 may have accepted some of the sections. I don't recall  
14 specifically what all was involved. There was some  
15 extra adjacent sidewalk that was cracked during the  
16 construction that we also had them remove, too, and  
17 replace.

18          And I have those in picture number three, where  
19 the cone is on, it's a slab. It doesn't show it very  
20 well, but it's cracked in that one. He was requested  
21 to remove that. That's beyond the scope of the job.

22          CHAIRMAN COWGER: Okay, let's do this, if you  
23 could. Give us kind of a point by point summary of  
24 what you found to be defective. And the reason you  
25 made this decision.

1           MR. PARMALEE: Well, the curb, itself, there was  
2 standing water right at the cut ramp, so people that  
3 were crossing the crosswalk would be going through a  
4 puddle of water practically all the time, if there was  
5 rain.

6           So that was an aspect of it that was not  
7 acceptable. They did not use expansion material  
8 between the curb and the sidewalk or at the tie-ins  
9 with the existing pavement, concrete pavement.

10           He was correct about the fact that the adjacent  
11 curb was not standard Type F curb, but we ordinarily  
12 just make modifications in existing curb to tie in.  
13 Those tie-ins were poorly done, again, there was no  
14 expansion material being utilized.

15           I requested at the time, because the curb ramp,  
16 usually we have a deeper broom finish and the broom  
17 finish was, to my personal feelings, was inadequate and  
18 substandard.

19           MR. ROEBUCK: Were you there during the  
20 finishing?

21           MR. PARMALEE: No, I was not.

22           MR. ROEBUCK: Was there anyone there of your  
23 people?

24           MR. PARMALEE: I don't recall.

25           MR. ROEBUCK: It doesn't take much more effort,

1           you know, to broom it more.

2           MR. PARMALEE: No, it doesn't. And as you can  
3           see, the saw joints were poor quality.

4           MR. ROEBUCK: Well, I wonder what the plans may  
5           have shown for some of those contraction joints. I  
6           see one here coming to a point. You're going to get --  
7           that's going to break. You accept the contractor, you  
8           change the detail. And somebody from the Department  
9           should have provided a little counsel on these small  
10          contracts, it looks like. Say, help us a little bit,  
11          fellow, go ahead and run that joint back out square  
12          here so we don't have that point.

13          MR. PARMALEE: Well, generally, on  
14          mini-contracts, we are really on a tight budget and we  
15          try to keep it down, the cost down, as much as we can.  
16          This is a very small aspect.

17          MR. ROEBUCK: You're dealing with such little  
18          bits of items to be worth this much money, and I have  
19          been around this thing a long time. I don't find that  
20          much fault with these pictures.

21          MR. PATEL: Let me also point out that as the  
22          picture really depicts, it shows the F curb, and this  
23          is where we were asked to install because this is the  
24          Department's drawing which shows and depicts what we  
25          are supposed to do on a Type F curb. And that's what

1 exactly they told us to do.

2 Actually on the straight curb like that, there is  
3 no pitch on the surface of it and they wanted us to  
4 pitch this. How do you pitch that if the other curb  
5 has no pitch? There's going to be a water pocket. But  
6 this is what exactly they wanted us to do.

7 And later on, that's what exactly they wanted us  
8 to remove.

9 CHAIRMAN COWGER: DOT, do you have --

10 MR. PATEL: I rest my case. The picture is the  
11 evidence. It speaks for itself.

12 MR. ROEBUCK: These pictures aren't so bad. I  
13 mean, they don't look that out of order.

14 MR. PARMALEE: I don't know what jobs you've been  
15 on, but these were not acceptable work on the jobs that  
16 I have been on.

17 CHAIRMAN COWGER: Let's not get into an argument  
18 about that. We're going to move on to another item.

19 MR. BOURDON: We would suggest that the pictures  
20 speak for themselves.

21 CHAIRMAN COWGER: DOT, obviously you have taken  
22 the position the contractor is due no additional  
23 compensation. Making the assumption for the moment  
24 that the Board does find in fact that this is a  
25 compensable cost to the contractor, did you take a look

1 at the amount that he is claiming to see if it's  
2 reasonable?

3 MR. BOURDON: The amount of money that he is  
4 requesting he alludes to as being actual. And to my  
5 recollection -- and I could be wrong, Mr. Cowger -- I  
6 don't believe that we saw a detailed breakdown as to  
7 how he figured those costs.

8 MR. ROEBUCK: How does it relate to his bid item?

9 CHAIRMAN COWGER: I can answer that question,  
10 because I happen to have a copy of the contract in  
11 front of me. And, of course, we're not sure about the  
12 quantities exactly, but if you assume that the plan  
13 quantities are reasonably correct, the total amount bid  
14 for curb, gutter and sidewalk is \$1200.

15 MR. BOURDON: That is correct.

16 MR. ROEBUCK: Plus the removal.

17 CHAIRMAN COWGER: I'm just telling you what he  
18 bid to do the work.

19 MR. MOREFIELD: Now, the expansion material, was  
20 that required in plans, specs, standards or whatever?

21 MR. PARMALEE: Yes.

22 MR. MOREFIELD: It was not put in, is that what  
23 you are saying?

24 MR. PARMALEE: Yes.

25 MR. PATEL: Here is the Department standard.



1           MR. MOREFIELD: In DOT's, quote, unquote,  
2           experience, are most joints cut as I see them cut on  
3           this diagram?

4           MR. PARMALEE: They are saw cuts, but they are  
5           usually of --

6           MR. MOREFIELD: Are they always that curved and  
7           linear?

8           MR. PARMALEE: No, they are usually straight.

9           MR. MOREFIELD: Do you routinely accept sidewalks  
10          of concrete that has cracks in it?

11          MR. PARMALEE: No.

12          MR. MOREFIELD: I guess I find opposite, just  
13          for the record, I find opposite from my fellow Board  
14          member, that these are not acceptable.

15          MR. CLARK: One other thing I want to add is that  
16          if you look at the picture there, you don't really see  
17          a Type F curb. He has a monolithic sidewalk that's  
18          modifying that, and this is the reason for the  
19          rejection of the work, due to the fact that the curb  
20          itself does not allow the water to continue in the  
21          direction that it is designed to flow, because of the  
22          fact that there is no lip.

23          According to the standards that Mr. Patel has  
24          there, that should have been constructed to allow the  
25          water to continue rather than to settle in the walkway.

1           MR. MOREFIELD: Can you point out where you're  
2 talking about?

3           MR. PARMALEE: Picture number seven.

4           MR. PATEL: They are only referring to picture  
5 number seven. The picture number seven is the one that  
6 they really asked us to remove.

7           MR. MOREFIELD: Just point out to me where the  
8 water is ponding, so I'll know, on that picture.

9           MR. CLARK: It would be in the area where the saw  
10 cut is in the --

11          MR. MOREFIELD: Hold it up and touch it.

12          MR. PARMALEE: Okay, it's right here.

13          MR. CLARK: See the saw line? That's where the  
14 water would pond.

15          CHAIRMAN COWGER: DOT, did you have an inspector  
16 out there while this work was going on? Is that kind  
17 of unusual?

18          MR. PARMALEE: I know that I wasn't there that  
19 particular day.

20          MR. BOURDON: It is not customary to have an  
21 inspector full time out there, but I'm sure that there  
22 was an inspector that was out there on the project  
23 throughout the construction.

24          MR. CLARK: Mr. Patel had a -- there was a form  
25 there to construct that gutter as it was supposed to

1 be, but when they removed the form, the finishers  
2 removed the lip of the gutter, also.

3 MR. PATEL: This type of curb and gutter and the  
4 sidewalk requires two separate pour. Unfortunately,  
5 when you are doing a small job like this, on a redoing  
6 of the job required us two days to two and a half days  
7 worth of work involving six people.

8 And I have the concrete tickets to back it up,  
9 that this thing was poured in two separate lifts,  
10 because that's the way the job is supposed to be done.

11 And the reason why the figure looks higher on our  
12 claim is because of that particular nature of the work.

13 MR. MOREFIELD: And the removal was only done on  
14 this side of the street or whatever?

15 MR. PATEL: That is correct. The removal was  
16 done strictly on number seven, picture number seven.

17 MR. MOREFIELD: So all that associated cost that  
18 we're talking about is just --

19 MR. PATEL: That is correct.

20 CHAIRMAN COWGER: Now, let me make sure I  
21 understand. There was work to be accomplished in two  
22 places; one, on the north side of the project there was  
23 a bicycle ramp, we might say, to be built.

24 MR. PATEL: Wheelchair ramp.

25 CHAIRMAN COWGER: Okay, a wheelchair ramp. And

1 in the middle, out in the median, there was a slab  
2 constructed between the roadway and the canal; no curb  
3 over there.

4 MR. PATEL: That is correct.

5 CHAIRMAN COWGER: And there was no work done,  
6 no corrective work done at that point. The only  
7 corrective work was on the north side where you had  
8 to remove and replace the wheelchair ramp, is that  
9 correct?

10 MR. PARMALEE: That's correct.

11 MR. PATEL: That is correct.

12 CHAIRMAN COWGER: Thank you. I think that we've  
13 got all we need on that. Probably all we can stand.  
14 Let's go on to relocation of the sign and let's keep  
15 that very, very brief, please.

16 MR. BOURDON: I think that the item, itself,  
17 deserves not much conversation, and I will make one  
18 simple statement. And that is, I asked where the  
19 project people were, and where the contractor was,  
20 because the sign was placed where it obscured a  
21 pedestrian signal.

22 MR. PATEL: It was installed as per drawing and  
23 as per instruction given to us at the time by the  
24 project engineer. The location was not liked by  
25 subsequently the rest of the other six to eight people

1 who came on the job site.

2 MR. MOREFIELD: Can you point out for us what  
3 sign you are talking about?

4 MR. PATEL: The particular sign that we are  
5 talking about, this particular sign like that. That's  
6 where exactly it was installed. The signal also was  
7 right there.

8 MR. MOREFIELD: Where did they make you relocate  
9 it?

10 MR. PATEL: This thing was relocated right here  
11 somewhere.

12 MR. MOREFIELD: DOT, is that about right, you  
13 made them come --

14 MR. BOURDON: The sign was relocated.

15 MR. MOREFIELD: So he did initially install it  
16 approximately where it's indicated on the plans?

17 MR. BOURDON: And moved the sign, yes, sir.  
18 There's no question. It's \$100. It's not worth  
19 disputing. I still ask just where everyone was, that  
20 common sense should have prevailed on the location of  
21 the sign.

22 CHAIRMAN COWGER: Okay, let's go on to  
23 maintenance of traffic.

24 MR. BOURDON: Maintenance of traffic, the  
25 Department's position, although Mr. Patel has gone

1 through and established again a daily cost per day,  
2 on his maintenance of traffic items, the Department's  
3 position is that if in fact the time extension is given  
4 and in fact we did offer him a time extension, that he  
5 is due the maintenance of traffic items as used, not as  
6 claimed.

7 I have run an estimate of that and the value, if,  
8 in fact, the time extension is honored as offered, it  
9 would be \$1254. That's for actual usage of maintenance  
10 of traffic items.

11 CHAIRMAN COWGER: Are you going to give us  
12 something on that or is that in your exhibit?

13 MR. BOURDON: No, I don't believe it is, but I do  
14 have a copy of a log of the maintenance of traffic  
15 items that I can provide to you. It should have been  
16 part of the package, but it's not.

17 CHAIRMAN COWGER: To speed this thing up a little  
18 bit, the DOT's position is that if the Board does in  
19 fact find that he should be paid for maintenance of  
20 traffic items which are unit price items, as I  
21 understand it?

22 MR. PARMALEE: Yes, sir.

23 CHAIRMAN COWGER: That the amount is \$1200?

24 MR. ROEBUCK: \$1254.

25 MR. PARMALEE: \$1254, approximately.

1           MR. CALCUTT: The contractor will stipulate  
2 that's a correct measure of the damage for maintenance  
3 of traffic.

4           MR. MOREFIELD: One more time for my benefit,  
5 what was the numbers that came up to \$1254?

6           MR. BOURDON: \$1254, and that was on a per day  
7 usage.

8           MR. MOREFIELD: How many days?

9           MR. BOURDON: For the 23 days.

10          MR. PATEL: This will be disputed by us, because  
11 the contract item 102-1, that's a lump sum maintenance  
12 of traffic item, which is claimed as \$3400.

13                 And in order to extend the maintenance of  
14 traffic, it requires personnel, it requires people  
15 staying over at the motel and whatnot. And part of  
16 the claim that we have made also reflects the part of  
17 the fact that we were required to go beyond the  
18 duration of the job in order to maintain the traffic,  
19 the maintenance of traffic, as far as the barricade and  
20 other items are concerned.

21                 They could be on a unit price basis, but what  
22 about the item number 102-1? And I believe that our  
23 claim includes that also.

24           CHAIRMAN COWGER: So you are saying that you are  
25 not going to stipulate to the 1254?

1 MR. PATEL: That's correct.

2 MR. MOREFIELD: You multiply 23 times what?

3 MR. BOURDON: It would be the 23 days. It would  
4 be for the actual usage of the items. For instance,  
5 what is being given to the Board now is a copy of final  
6 measurements that I asked be provided. Construction  
7 site barricades, there was none used on the project.

8 Construction signs, the time period that would be  
9 considered would be from the 22nd of January to the  
10 11th of February, which would be 18 per day for 21  
11 days, generates down to \$378 and goes down. That way  
12 you come up with the \$1254. You use the contract  
13 values and added in some of those areas.

14 CHAIRMAN COWGER: Okay, let's go on to overhead  
15 and profit. I think that we know enough about that.

16 MR. BOURDON: Overhead and profit, again, the  
17 Department's position is that the overhead and profit  
18 is not a compensable issue. The delay in the material  
19 certification was what the time extension was for and  
20 there was not a claim filed by American Lighting as  
21 being the party damaged.

22 So therefore the Department does not see that  
23 there is any overhead and profit that should be added  
24 onto the contract.

25 CHAIRMAN COWGER: I think it's appropriate that



1 the contractor get an opportunity to rebut some of that  
2 because I don't think that you have really said much  
3 about that up to this point.

4 MR. PATEL: On a mini-contract like this that  
5 requires only 30 days duration and thereby we were  
6 required to continuously monitor the job and continuous  
7 meeting and whatnot, we spend so much time hand  
8 carrying the documents from one department to the  
9 other, I believe the overhead and profit is justifiable  
10 in this particular case because we were required to go  
11 beyond what was our understanding of the scope of work  
12 was and I will rest with that.

13 MR. BOURDON: The only comment, Mr. Cowger, that  
14 I would offer in that instance, the contractor's claim  
15 for overhead appears to be for 51 days at a set price  
16 that he has calculated in the original contract at a  
17 ten percent value, divided by the original contract  
18 days to come up with his requested per day cost.

19 Portions of time that are obviously the areas of  
20 dispute, February 12th to the 29th, which is from  
21 conditional acceptance to the final completion of the  
22 punch list items, when the contractor then removed  
23 his physical work effort on the project, and the  
24 remainder of the time, until the 11th of April, was  
25 the 60-day burn in time required for the signalization.

1           The delay from 1-8 through the 22nd, the  
2           Department's position was that the main cause was not  
3           the sublet approval, it was the lack of maintenance of  
4           traffic plan as required by the contract.

5           The other date that he has used, 12-12, to 12-24  
6           and 1-2 through 1-8 is days that were associated with  
7           the material certification. He had no costs on the  
8           project because he was waiting for that certification.  
9           That was within the normal expected time frame when he  
10          submitted it.

11          CHAIRMAN COWGER: What period of time was that  
12          again?

13          MR. BOURDON: Through December 12th through the  
14          24th, which is when the holiday period would have been  
15          begun, and he was granted those times. Those dates  
16          were not equitable dates to compensate for, because  
17          they were within the normal procurement period in the  
18          contract.

19          That's what the 60 days were granted to him over  
20          and above the 21. And again, it is over and above the  
21          21 that was given to him in the original contract; so  
22          he had 81 days of procurement time.

23          MR. CALCUTT: These were contract counted days.

24          MR. PATEL: It costs time and money when you  
25          have not installed the procurement on the job site in

1 time.

2 CHAIRMAN COWGER: I don't understand how you say  
3 the period between December 12 and December 24 was  
4 part of the procurement period because charging the  
5 contract time began on December 12.

6 MR. BOURDON: That is correct.

7 CHAIRMAN COWGER: And I thought that was the  
8 expiration of the procurement period.

9 MR. BOURDON: Contract time started on the 12th  
10 and it was the expiration of the period, but our  
11 position is that that delay was not damaging to the  
12 contractor because he did not come out on the job. He  
13 had put no cost effort on the project, which is  
14 basically our position.

15 CHAIRMAN COWGER: Okay, we understand.  
16 I want to back up just a minute. Part of this dispute  
17 is the period between February 11, the date of  
18 conditional acceptance, and February 29th, which  
19 I believe is the date the contractor said that he  
20 completed all the work.

21 We may be a day or so off in there, but that  
22 period of time. I'm not certain what work took place  
23 in that period of time other than the replacement of  
24 the sidewalk.

25 MR. BOURDON: The work effort was basically

1 punch list items, just a cleanup of the punch list on  
2 the project. All contract items had been done at that  
3 point.

4 MR. PARMALEE: Palm Beach County was the  
5 maintaining agency on the pedestrian crossings and the  
6 signals, and so they required the subcontractor,  
7 American Lighting to do some work to -- for their  
8 acceptance, and that's typical as procedure.

9 MR. CALCUTT: We believe that the sign was  
10 relocated during that time period, too.

11 MR. PATEL: Not only that, there was one item  
12 which hasn't been mentioned here, which is the  
13 striping. In one particular instance, the striping  
14 kind of got wiped out because of some truck movement or  
15 whatever and we bought the powder, we brought in the  
16 powder, heated the powder and poured and fixed the  
17 sign. I mean, fixed the striping.

18 CHAIRMAN COWGER: So there was some restriping  
19 done, also?

20 MR. PATEL: Restriping done, also.

21 CHAIRMAN COWGER: On the issue of the sidewalk,  
22 can you tell us when it was that the contractor was  
23 notified that the sidewalk would have to be replaced?

24 MR. PARMALEE: No, I don't have that information.  
25 If I saw it on the job after he completed it, I would

1           have verbally told him. I don't believe that I  
2           recorded that information. That was just normal  
3           procedure.

4                   CHAIRMAN COWGER: Was it on the punch list on  
5           February 12th?

6                   MR. PATEL: No, it wasn't.

7                   MR. PARMALEE: It may have been completed prior  
8           to the punch list.

9                   MR. PATEL: There was another punch list on,  
10          I believe, February 18th or 19th or somewhere around  
11          there.

12                   CHAIRMAN COWGER: Is there some documentation  
13          here that tells us when the sidewalk replacement work  
14          was done?

15                   MR. PATEL: The sidewalk replacement work was  
16          done on February 24th and 25th, from our records of the  
17          concrete tickets and receipts and all that.

18                   CHAIRMAN COWGER: My question is, why was there  
19          such a long delay between conditional acceptance and  
20          replacement of the sidewalk? Was it waiting for DOT to  
21          make a decision or was it the contractor's election to  
22          wait that long?

23                   MR. CLARK: It was in dispute that the contractor  
24          was maintaining that it was acceptable and we were  
25          saying that we would not accept the project without it.

1           MR. BOURDON: They are looking in the daily  
2 diaries to see if they can find it.

3           MR. ROEBUCK: Here are the concrete delivery  
4 tickets, the 24th and 25th of February, when you  
5 delivered the concrete, somewhere in that time.

6           MR. MOREFIELD: We would like to know when you  
7 told him he had to take it out.

8           MR. PARMALEE: I have a punch list that was  
9 compiled, and the contractor was given a copy on the  
10 24th, but I don't know --

11          MR. PATEL: I have the copy of both the punch  
12 lists with me. I can pull that right here. This punch  
13 list was prepared and delivered to us on 2-11, and this  
14 punch list was prepared and given to us on February  
15 20th or 22nd. I forget the exact date, because they  
16 didn't write really any date on that.

17          And that's -- the daily diary shows that the  
18 meeting was held on the 18th.

19          CHAIRMAN COWGER: I didn't understand that last  
20 sentence.

21          MR. PATEL: The daily diary indicates that the  
22 meeting was held on February 18th. That punch list  
23 item was given to us --

24          CHAIRMAN COWGER: So you are saying that you  
25 weren't notified until the 18th.

1           MR. PATEL: The broken sidewalk, by the way, that  
2 involves asphalt, doesn't really involve any concrete.  
3 That would be asphalt.

4           CHAIRMAN COWGER: What's the date of that?

5           MR. ROEBUCK: It's not dated.

6           MR. PARMALEE: I have February 17th on my diary.

7           MR. PATEL: It was done on Wednesday, February  
8 17th or 18th.

9           CHAIRMAN COWGER: Unless the other Board members  
10 have any further questions, I am ready to leave that  
11 issue.

12          MR. ROEBUCK: Yeah.

13          MR. MOREFIELD: No questions.

14          CHAIRMAN COWGER: DOT, I think there's one other  
15 item. Do you have any comments on the interest?

16          MR. BOURDON: The interest that would flow from  
17 compensable damages, the Department's position is that  
18 there is no compensable damages and therefore no  
19 damages.

20          CHAIRMAN COWGER: Does any one else have any  
21 burning information they wish to present at this point?  
22 We're approaching closing. Mr. Roebuck, do you have  
23 any questions?

24          MR. ROEBUCK: Philosophically, I guess, I  
25 listened here and it seems like with mini-contracts

1 and the effort to simplify something that's very  
2 cumbersome, I wonder if the Department is in every area  
3 taking it upon themselves to help the mini-contractor and  
4 try to expedite something that's the intent of it to  
5 start with.

6 Like this subcontractor; you knew that he had to  
7 have a lighting subcontractor and someone, really,  
8 should have been pushing him along.

9 You expect Patel to say, well, I am going to  
10 write you a letter requesting one, but that's the  
11 formal Blue Book way to do it. But in this instance,  
12 I just think that a little humanness could help a great  
13 deal in trying to cooperatively work these jobs out.

14 That's just a comment of philosophy.

15 MR. BOURDON: That's the Department's position  
16 and the record does not reflect that in the written  
17 form, but I can assure you that the Department was  
18 doing whatever they could with Mr. Patel.

19 The only thing that I suggest to the Board is  
20 that these two little contracts were very small  
21 contracts. There was four or five other contracts of  
22 major magnitude that we were having problems with  
23 Mr. Patel on. It was a frustrating period of time.

24 CHAIRMAN COWGER: Okay, Mr. Morefield, did you  
25 have any questions?



1 MR. MOREFIELD: No.

2 CHAIRMAN COWGER: This hearing is hereby closed.

3 The Board will meet on September 12th, 1991 to  
4 deliberate on this claim and you will have our order  
5 shortly thereafter.

6 (Whereupon, the proceedings were concluded at  
7 1:00 p.m.)

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CERTIFICATE OF REPORTER

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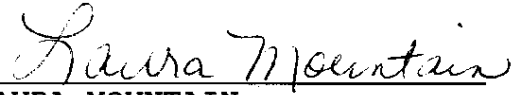
STATE OF FLORIDA )  
COUNTY OF LEON )

I, LAURA MOUNTAIN, Court Reporter and Notary Public in  
and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing proceedings were  
taken before me at the time and place therein designated;  
that my shorthand notes were thereafter reduced to  
typewriting under my supervision; and the foregoing pages  
numbered 1 through 51 are a true and correct record of the  
aforesaid proceedings.

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

WITNESS MY HAND AND SEAL this, the 13<sup>th</sup> day of  
August, A.D., 1991, IN THE CITY OF TALLAHASSEE,  
COUNTY OF LEON, STATE OF FLORIDA.

  
LAURA MOUNTAIN  
Court Reporter  
Post Office Box 13461  
Tallahassee, Florida 32317

My Commission Expires  
September 23, 1994