

STATE ARBITRATION BOARD
1022 Lothian Drive
Tallahassee, Florida 32312

12-5-07
MSW

+++ NOTICE +++

In the case of Overstreet Paving Company versus the Florida Department of Transportation on Project No. 14050-3538 in Pasco County, Florida, both parties are advised that State Arbitration Board Order No. 7-91 has been properly filed on February 6, 1992.

S.A.B. CLERK
FEB 6 1992
FILED

H. Eugene Cowger
H. Eugene Cowger, PE
Chairman & Clerk, SAB

Copies of Order and Transcript to:

J.B. Lairscey, PE, Director of Construction/FDOT
Don Vance, Administrative Project Manager/Overstreet Paving Company

HEC/sfc

STATE ARBITRATION BOARD

ORDER NO. 7-91

RE:

Request for Arbitration by
Overstreet Paving Company on
Job No. 14050-3538 in
Pasco 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 9:00 a.m. on Tuesday,
December 10, 1991.

It is noted that the Request for Arbitration of A Claim,
the Notice of Arbitration Hearing, and the Transcript of
Hearing designate an incorrect Project No. The Contractor's
letter of October 29, 1991 to the State Arbitration Board and
exhibits submitted by the Contractor with his Request for
Arbitration establish that the Job No. from which this claim
arose is 14050-3538.

The Board Members, having fully considered the evidence
presented at the hearing, now enter their order No. 7-91 in
this cause.

ORDER

The Contractor presented a request for arbitration of
a claim for additional compensation in the amount of
\$90,531.00. The amount claimed represents payment for removal
of 17,244 square yards of asphaltic concrete pavement at the
contract unit price of \$5.25 per square yard.

The entire dispute here is over whether payment for the
work of removing existing asphalt pavement is to be included
in the compensation for the bid item Clearing and Grubbing
(Item No. 110-2) or in the compensation for the bid item
Removal of Existing Pavement (Item No. 110-4).

The Contractor presented the following information in

support of his claim:

1. The plan Summary of Quantities contains the bid item Removal of Existing Pavement.
2. Article 110-11.4 (Compensation -Removal of Existing Pavement) of the Standard Specifications provides "When a separate item for Removal of Existing Pavement is provided, the quantity to be paid for shall be the number of square yards of existing pavement of the types listed in 110-7.1. acceptably removed and disposed of as specified."
3. Article 110-7.1 (Removal of Existing Pavement-Description) states: "The work specified in this Article consists of removing and disposing of existing concrete pavement, concrete sidewalk, slope pavement, ditch pavement, curb, and curb and gutter, where shown in the plans....."
4. The Standard Specifications contain sections covering two types of concrete pavement, Asphaltic Concrete Pavement and Cement Concrete Pavement.
5. Our estimator, who had only recently been employed by us, relied on the wording of the contract documents in preparing our bid for this project. Department of Transportation internal documents such as their Basis of Estimates Manual and design area calculations are not incorporated into the contract documents by reference. We were not aware of the contents of these internal documents at the time we prepared our bid for this project. Our conclusion, at that time, was payment for removal of existing asphaltic concrete pavement would be made under the bid item Removal of Existing Pavement.
6. We did not detect the substantial error in the plan quantity for Removal of Existing pavement, because the number of projects for which we were preparing bids limited the time available to study each set of plans.
7. Another firm that submitted as bid for this project has certified that they also included the cost of removing existing asphalt pavement in their bid unit price for the bid item Removal of Existing Pavement.

8. The Department of Transportation has not included the quantity of asphaltic concrete pavement removed in the pay quantity for Removal of Existing Pavement.

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

1. The Department of Transportation Final Estimates Manual provides that the work covered by the item Clearing and Grubbing (Item No. 110-1-1 LS/AC) includes removal of flexible pavement.
2. It is not industry practice to refer to asphalt pavement as concrete pavement. It is our position that all of the items described in Subarticle 110-7.1 of the Standard Specifications as removal of existing pavement are made with portland cement concrete. The work effort and cost to remove asphalt pavement is not similar to the work effort and cost to remove portland cement concrete pavement.
3. In describing the work covered by the item Removal of Existing Pavement (Item no. 110-4), the Department of Transportation Basis of Estimates Manual specifically states that flexible pavement removal is not included in the work to be paid for under that item. This manual is available to all contractors.
4. We have consistently paid for removal of asphalt pavement under the item Clearing and Grubbing, except in situations where the plans contain the pay item Removal of Flexible Pavement, a pay item generated with a Special Provision.
5. Prior to preparing his bid for this project, on other projects, the Contractor accepted payment for removal of existing asphalt pavement under the item Clearing and Grubbing.
6. The difference between the plan quantity for Removal of Existing Pavement (469 Sq. Yds.) and the quantity of asphalt pavement to be removed (17,244 Sq. Yds.) is substantial. When he was preparing his bid, the Contractor should have noticed this very obvious discrepancy and sought an

interpretation before finalizing his bid. Article 5-4 of the Standard Specifications prohibits the Contractor from taking advantage of an apparent plan error. The Contractor did not raise this issue until some time after work began.

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

1. There is no contract provision requiring a bidder to be aware of Department of Transportation internal procedures.
2. It is apparent from a cursory examination of the plans that the plan quantity for Removal of Existing Pavement does not include the extensive areas in which removal of asphalt pavement must be accomplished.
3. It is common practice in the construction industry to refer to asphaltic concrete pavement as "asphalt" and cement concrete pavement as "concrete".

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

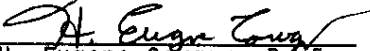
The Contractor is due nothing for his claim.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$237.50 for Court Reporting Costs.

Tallahassee, Florida

Dated: February 6, 1992

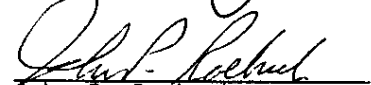
Certified Copy:


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

February 6, 1992
Date


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


 K. N. Morefield, P. E.
 Member


 John P. Roebuck
 Member

S.A.B. CLERK

FEB 6 1992

FILED

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman
 Mr. Ken N. Morefield
 Mr. Jack Roebuck

APPEARING ON BEHALF OF THE OVERSTREET PAVING COMPANY:

Mr. Don Vance
 Mr. Thomas Overstreet

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Charles Peterson
 Mr. Lex Chance
 Ms. Sandy Piccirilli
 Mr. Frank Proch

* * *

I N D E X

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P R O C E E D I N G S

1 1
2 CHAIRMAN COWGER: This is a hearing of the State
3 Arbitration Board established in accordance with
4 Section 337.105 of the Florida Statutes.

5 Mr. Ken Morefield was appointed as a member of
6 the Board by the Secretary of the Department of
7 Transportation. Mr. Jack Roebuck was elected by the
8 construction companies under contract to the Department
9 of Transportation.

10 These two members chose me, H. E. "Gene" Cowger,
11 to serve as a third member of the Board and as
12 Chairman.

13 Our terms of office began July 1, 1990 and expire
14 June 30, 1993.

15 Will all persons who intend to make oral
16 presentations during this hearing please raise your
17 right hand and be sworn in.

18 (Whereupon, all witnesses were duly sworn.)

19 CHAIRMAN COWGER: The documents which put this
20 arbitration hearing into being are hereby introduced as
21 Exhibit No. 1. These documents are the contractor's
22 request for arbitration, all information that was
23 attached to that request, the notice of arbitration
24 hearing, and a letter dated November 26, 1991, from
25 the contractor to the Board submitting additional

1 information for consideration at this hearing.

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

4 (Discussion off the record)

5 CHAIRMAN COWGER: Back on the record. While we
6 were off the record, the Department of Transportation
7 submitted an exhibit, a bound package of various
8 information in a blue cover which was identified as
9 Exhibit No. 2. Does either party wish additional time
10 to examine the exhibits?

11 (Whereupon, Exhibit Nos. 1 and 2 were received in
12 evidence.)

13 CHAIRMAN COWGER: During this hearing the parties
14 may offer such evidence and testimony as is pertinent
15 and material to the controversy and shall produce such
16 additional evidence as the Board may deem necessary to
17 an understanding and determination of the matter before
18 it. The Board shall be the sole judge of the relevance
19 and materiality of the evidence offered.

20 The hearing will be conducted in an informal
21 manner. The contractor will elaborate on their claim
22 and then the DOT will offer rebuttal.

23 Either party may interrupt to bring out a point
24 by coming through the Chairman. However, for the sake
25 of order, I must instruct that only one person speak at

1 a time.

2 Also, so that our court reporter will be able to
3 produce an accurate record of the hearing, please
4 introduce yourself the first time you speak.

5 It's appropriate at this point now for the
6 contractor to make an opening statement. We like for
7 the contractor to begin his opening statement by
8 telling us the total dollar amount of his claim.

9 MR. VANCE: I'm Don Vance with Overstreet Paving
10 Company. The total dollar amount of the claim is
11 \$90,531. The claim is for the removal of existing
12 pavement pay item in the contract documents as 110-4.

13 There's been several correspondences back and
14 forth between Overstreet Paving and the Department of
15 Transportation.

16 Viewing our side of it, our interpretation of
17 the specifications, the contract documents, and the
18 DOT's -- basically our claim is really quite simple.
19 It says in the clearing and grubbing pay item in the
20 specification book and in the removal of existing
21 pavement pay item, if there is a specific item for the
22 removal of existing pavement, then that would more or
23 less take precedence over the clearing and grubbing
24 generalized pay item. It allows for the removal of
25 existing pavement.

1 Concrete pavement is the terminology in the
2 specification book, and also in the specification book
3 it allows for two types of concrete pavement, one being
4 asphaltic concrete, the other one being portland cement
5 concrete.

6 We have been paid to date for the portland cement
7 concrete removal but have not been paid for the
8 asphaltic concrete removal.

9 CHAIRMAN COWGER: Is that all you wish to say?

10 MR. VANCE: At this point in time.

11 CHAIRMAN COWGER: You in essence stand on what
12 is in the record as far as your correspondence is
13 concerned?

14 MR. VANCE: Yes, sir.

15 CHAIRMAN COWGER: Okay. DOT, we would like to
16 hear your rebuttal and then I'm sure we will discuss
17 this some more.

18 MS. PICCIRILLI: My name is Sandy Piccirilli,
19 assistant district construction engineer in District
20 VII, which is the district where this project was
21 performed.

22 We are here to provide the Department's
23 position in this arbitration hearing. The first thing
24 I would like to do is discuss the two areas of the
25 specification that Mr. Vance has discussed and go

1 into a little more detail and basically give you the
2 Department's method and procedure of determining these
3 particular quantities.

4 The first thing I would like to do is pull out
5 the -- and we have a copy -- my whole thing is set out
6 in Exhibit 2.

7 You have a copy of Section 110 clearing and
8 grubbing spec under the 1986 Standard Specifications
9 for Roads and Bridges. It says in this section
10 clearing and grubbing within the area of the roadway
11 right-of-way, borrow pit, base materials, lateral
12 ditches, so on and so forth.

13 Then the next sentence, "Included in the work
14 under this section is the removal and disposal of all
15 trees, stumps, roots, protruding objects, buildings,
16 structures, appurtenances, existing pavement and other
17 facilities necessary to prepare the area for the
18 proposed construction."

19 The two key words are "within the area of the
20 roadway right-of-way" and "existing pavement."

21 I think right now the Department will define our
22 definition of existing pavement and how our projects
23 are prepared using that definition of existing
24 pavement.

25 The next thing I would like to do is go to

1 AI-2, which is an excerpt from the manual, the final
2 estimates manual. I'm aware the contractor is not
3 required to possess this manual, but it is available
4 to him. I know many contractors who do have a copy of
5 this manual.

6 This is the Department's procedure for
7 determining plan quantities on projects. Let me quote
8 from there. "Clearing and grubbing consists of
9 complete removal and disposal of all vegetation,
10 debris, drainage structures, flexible pavement,
11 buildings or any other obstructions in all areas where
12 excavation is to be done or where embankments or
13 structures are to be constructed. This includes
14 roadway area, ditch areas, borrow pits, culverts,
15 pipes," et cetera.

16 This particular manual is used and is the
17 Department's procedure for determining original plan
18 quantities and is the method used to pay the contractor
19 for those particular quantities. This is what we use
20 for our document to prepare these quantities.

21 I guess what I'm trying to show in presenting
22 this, this is the thinking and the reasoning the
23 Department uses when it puts together its pay
24 quantities and its bid items for a particular project.

25 The next exhibit is 1A-3 -- 1B-1. That's the

1 removal of existing pavement. I would like to read
2 from that.

3 "This work specifies in the article -- the work
4 specified in this article consists of removing and
5 disposal of existing concrete pavement, concrete
6 sidewalk, slope pavement, ditch pavement, curb, and
7 curb and gutter where shown in the plans or ordered by
8 the engineer to be removed."

9 The key word in this particular paragraph is
10 "concrete." Not only where it refers to concrete
11 pavement or sidewalk, but you will notice every item
12 specified in this paragraph is made with portland
13 cement concrete.

14 Industry does not typically refer to asphalt as
15 concrete pavement, nor do they interpret this paragraph
16 to include asphalt pavement. This has never been
17 challenged. As a matter of fact, it's never been an
18 issue with the industry until today.

19 The next thing I would also like to go to the
20 estimates manual, 1B-2. This is our procedure for
21 determining pay quantities for this item. Under the
22 removal of the existing pavement it says basically,
23 "Removing and disposing of existing concrete pavement,
24 concrete sidewalks, slope pavement, ditch pavement and
25 curb and gutter, where required."

1 The thing we need to note under the original --
2 where it has in parentheses original, this means this
3 is the way the original quantity is determined for this
4 project.

5 What I want you to do is note the note. It says,
6 "Do not include flexible pavement removal under this
7 item."

3
8 I think we are all aware that flexible pavement
9 is asphalt pavement. The Department when they put
10 together their quantities, it explicitly tells them not
11 to include flexible pavement in this item.

12 Once again let me reiterate. This manual is a
13 procedure used during project quantity computations.
14 This is the thinking and reasoning behind the
15 Department when we put together these quantities.

16 I guess the other thing is --

17 MR. ROEBUCK: That's from your estimates manual?

18 MS. PICCIRILLI: Yes, sir.

19 MR. VANCE: Could I interrupt for a minute?

20 CHAIRMAN COWGER: I think you are going to
21 another point --

22 MS. PICCIRILLI: Let me finish one thing. All
23 I want to say is the Department has not ever and does
24 not intend to ever pay for flexible pavement under this
25 item as long as it's under our estimates manual.

1 CHAIRMAN COWGER: Now, are you through with that
2 exhibit?

3 MS. PICCIRILLI: Yes, sir.

4 CHAIRMAN COWGER: Since you're let getting ready
5 to go to another exhibit, we will let Mr. Vance come
6 in.

7 MR. VANCE: On the front of the plans it
8 indicates the specification book and the indexes that
9 are used on the roadway standards. The estimates
10 manual is not included on the front of the plans as
11 being part of or anything that would support any of the
12 documentation that a bidder would work from. Correct?

13 MS. PICCIRILLI: Right.

14 MR. VANCE: And I'm sure probably before this
15 date, but this is 1991, which is way after the fact,
16 estimates manual that you referred to here. Do you
17 know, does the '86 one talk about all of this?

18 MR. CHANCE: Yes, it does.

19 MR. VANCE: Again, the estimates manual is
20 not truly part of the bidding documents nor is it
21 referenced on the plans like the specification book or
22 the roads and roadway standards book is referenced.

23 MS. PICCIRILLI: I acknowledge that. It is not a
24 requirement for you to possess this manual.

25 MR. VANCE: I know it's not a requirement but

1 it's not referenced on there as being a supporting
2 document.

3 MS. PICCIRILLI: All I'm trying to do is show
4 you what the DOT's thinking is when we prepare the
5 quantities. This is the way we think. It is
6 acknowledged in the record that you do not have to have
7 this book. It is not a requirement that you have this
8 book.

9 What I'm trying to say is this is what we
10 perceive -- this is basically our Bible when we prepare
11 a bid.

12 MR. VANCE: Our Bible when we prepare the bid is
13 the Blue Book and those plans.

14 CHAIRMAN COWGER: I think we can understand that.
15 Mr. Morefield?

16 MR. MOREFIELD: I will do it later.

17 CHAIRMAN COWGER: I think the Board understands
18 both sides' position on the thing.

19 MS. PICCIRILLI: The next thing I would like to
20 do is discuss now a little more in detail the clearing
21 and grubbing section of the specification.

22 This particular specification under clearing and
23 grubbing, Section 110, has been in existence since the
24 1966 specifications and has changed minimally, if at
25 all, these two particular sections since 1966.

1 The next exhibit I have, which is 2B-1 is a
2 listing of all the projects that Overstreet has bid.
3 There were 12 projects Overstreet has bid since the
4 1977 specification year. You can see the listing of 12
5 projects and the relative specs in that. This is '77.
6 We could go back all the way to '66. This is for bid
7 item 110-4, which is removal of payment.

8 CHAIRMAN COWGER: Excuse me just a minute.
9 I want to define that --

10 MS. PICCIRILLI: It's right there, 2B-1. Okay.
11 These projects, the majority -- I think it was
12 approximately 10 out of these 12 all contain the
13 clearing and grubbing item 110-2.

14 And I guess what I'm trying to show with this
15 particular exhibit is the fact that, or this particular
16 page of the exhibit, is that they were paid for asphalt
17 removal under bid item 110-4 on these previous
18 projects.

19 Those have been closed out. Some of these have
20 not yet been closed out. The project has not yet been
21 completed. The ones closed out, the ones containing
22 clearing and grubbing, they were paid for flexible
23 asphalt under 110-2.

24 This is --

25 CHAIRMAN COWGER: Excuse me just a minute. I'm

1 confused because --

2 MR. ROEBUCK: This is asphalt pavement removal?

3 MS. PICCIRILLI: No, this is pavement, 110-4 is
4 removal of existing pavement.

5 CHAIRMAN COWGER: Let me ask you a question. We
6 understand that 110-4 now is the pay item for removal
7 of existing pavement.

8 MS. PICCIRILLI: Yes.

9 CHAIRMAN COWGER: On these contracts that you
10 have listed in the exhibit that we're looking at,
11 you're saying that Overstreet was paid for removal of
12 existing flexible pavement under that item?

13 MS. PICCIRILLI: Under 110-2. What I'm saying is
14 both items were contained in the contract and they were
15 paid for removal of flexible pavement under item 110-2,
16 clearing and grubbing.

17 CHAIRMAN COWGER: Clearing and grubbing is the
18 title of that item, which is a lump-sum item?

19 MR. PROCH: No --

20 MS. PICCIRILLI: On this particular project it
21 was acres.

22 CHAIRMAN COWGER: 110-2 is per acre.

23 MS. PICCIRILLI: They had both bid items on this
24 job and they were paid for flexible pavement under
25 clearing and grubbing.

1 MR. MOREFIELD: Was there any challenge by them
2 to that?

3 MS. PICCIRILLI: There were on two particular
4 contracts, the one in question today and another
5 contract which is going to be my next exhibit.

6 MR. PROCH: Excuse me, Mr. Chairman. I would
7 like to reiterate. I'm Frank Proch, assistant resident
8 in Tampa. They did accept payment for this clearing
9 and grubbing item for this area in question, pavement
10 removal.

11 MR. MOREFIELD: On this project?

12 MR. PROCH: Yes, sir, on this project in
13 question.

14 MS. PICCIRILLI: We will get to that when we
15 get --

16 MR. VANCE: Would you explain that? I didn't
17 understand what you said.

18 MR. PROCH: You accepted our acreage quantity
19 that included the removal of existing pavement or
20 quantity for that item was separate. You accepted
21 clearing and grubbing acres in that 22 acres plus that
22 we paid for clearing and grubbing.

23 MS. PICCIRILLI: That's one of my later exhibits.
24 We can go into detail on that at this point.

25 MR. MOREFIELD: You're saying the acreage

1 included the square yards of the asphalt pavement in
2 question?

3 MR. PROCH: Yes, sir. The payment was accepted,
4 nothing was offered back in question that they should
5 be paid for item 110-4.

6 CHAIRMAN COWGER: Before we leave this exhibit
7 that we're on, these projects that are listed were all
8 bid on prior to the date on which the project that
9 we're here to discuss today was bid on?

10 MS. PICCIRILLI: I think --

11 CHAIRMAN COWGER: Let's say essentially all of
12 them.

13 MS. PICCIRILLI: I would say maybe the last
14 couple.

15 MR. VANCE: No, No.

16 MS. PICCIRILLI: I can confirm definitely one,
17 two -- seven of them were, including this project --
18 eight of them.

19 MS. PICCIRILLI: This is 35-38.

20 CHAIRMAN COWGER: Obviously the four at the very
21 beginning that were bid under the 1977 or the 1982 book
22 were bid before this project.

23 MR. VANCE: But that's all. The 35-38 job, which
24 is the one in question --

25 MS. PICCIRILLI: 3485, that's my next exhibit.

1 MR. VANCE: No, it wasn't.

2 CHAIRMAN COWGER: Let's go on to that next
3 exhibit. Mr. Morefield had a question, I believe.

4 MR. MOREFIELD: That's all right.

5 CHAIRMAN COWGER: Okay.

6 MS. PICCIRILLI: What I'm saying is this issue
7 was never raised by Overstreet and the specification
8 was never challenged except for one particular day
9 during the duration of two particular contracts.

10 Let me explain that further. Your next exhibit,
11 2B-2 is a letter dated April 24, 1990 from Overstreet
12 to Allan Adderley on a different state project, state
13 project 10190-3495 and then two goes with the projects
14 on that, but the lead project is 10190-3495.

15 They provide a letter basically challenging
16 the specification, making the same compensation
17 request. Mr. Adderley, which is the next letter,
18 denied Mr. Vance's request and then just to further
19 reinforce the Department's stand on this particular
20 issue, the next letter is a letter from Jimmy Lairscey,
21 who at the time was the district construction engineer,
22 reinforcing Mr. Adderley's letter and reinforcing the
23 Department's position on this particular issue.

24 To date nothing further has happened on this
25 particular project. The Department at that time was

1 just sort of the opinion that it was settled at that
2 point, on this particular project.

3 The next exhibit -- well, the next part of the
4 exhibit which is 2B-3, I think we have all seen this
5 particular letter. This is the letter that Overstreet
6 wrote to Mr. Gant on this particular project. And if
7 you will notice the date is exactly the same, April 24,
8 1990. And it's also the same identical letter except
9 for the project numbers have been changed.

10 In referencing this particular letter, paragraph
11 2, the Department was unable to find the notations they
12 refer to in paragraph 2 for this particular project.

13 So at one point during this arbitration I would
14 very much appreciate for Mr. Vance to point out those
15 notations on the plans because we were unable to find
16 them. I think that's a very relevant paragraph when it
17 comes to this particular project.

18 But anyway, just to go further into this,
19 Mr. Gant received the letter, denied it. Mr. Vance
20 wrote, Mr. Irwin via Mr. Gant back again and we once
21 again denied it.

22 I think the important thing to see about these
23 two particular projects is the fact that these are
24 two different projects with two different project
25 engineers. If you read the responses to all the

1 Department's letters, every letter was consistent and
2 had the same response.

3 What I'm trying to show is that the Department
4 has never waived from this interpretation of this
5 spec section. They all -- all of them felt exactly
6 the same way and had almost identical responses to
7 Overstreet's letters.

8 The next item is 2C-1, which is a listing of
9 projects that -- it's project 14010-3517. This is just
10 an exhibit that shows that Overstreet is aware of the
11 fact that the Department does have a pay item for
12 removal of flexible pavement.

13 This was a project that they bid on and they were
14 awarded. So they are definitely aware of the fact that
15 if the Department attempts to pay for the removal of
16 asphalt pavement, it would be under this separate pay
17 item.

18 This is normal Department procedure. If for some
19 reason we need to remove flexible pavement and it's not
20 included in clearing and grubbing, it would be paid for
21 under pay item 110-70. Overstreet is very aware of
22 that.

23 I just also want to note at this point there a
24 Purcell -- that Purcell Contractors also bid on this
25 particular project.

1 My next exhibit is 2D-1. This reinforces my
2 point. This is the statewide total construction
3 contract for fiscal year 1989-90 where you can see on
4 30 projects we let statewide, we have used the bid item
5 110-70, removal of flexible pavement.

6 The Department is not afraid to use this bid
7 item. If we need it, it's required, we use it. That
8 is our separate pay item, removal of flexible pavement.
9 It has never been included in 110-4.

10 CHAIRMAN COWGER: Before you leave that exhibit,
11 I have a question. That item number 110-70 is not
12 shown in the standard specifications. As I understand
13 it then that is an item that would be generated through
14 a special provision in the contract, is that correct?

15 MR. CHANCE: Yes, sir. I'm Lex Chance with the
16 estimates office. That is correct.

17 CHAIRMAN COWGER: So it's not the same item that
18 we're talking about. And I think you made that clear.
19 This is another item called removal of flexible
20 pavement.

21 Under what circumstances does DOT use that
22 particular pay item? Can anybody address that?

23 MS. PICCIRILLI: Typically when we use it is when
24 you have temporary detours and you don't include the
25 removal of the detour in the lump sum, in the price of

1 placing the detour. That's one of the usual situations
2 that we use it in. Can you think of any other?

3 MR. CHANCE: That's the most common I can think
4 of.

5 MR. ROEBUCK: Even if you've got an extensive
6 quantity?

7 MR. CHANCE: If you have an extensive quantity it
8 would be appropriate to use it.

9 MS. PICCIRILLI: I think unless it's unusually
10 extensive.

11 CHAIRMAN COWGER: And it would be confined to
12 removal of the existing pavement on the detour then?
13 Is that what your testimony was?

14 MS. PICCIRILLI: I don't think it's confined, but
15 it's typical when we use it.

16 MR. MOREFIELD: And when clearing and grubbing
17 item may not be on the project?

18 MS. PICCIRILLI: Correct. This Exhibit I had
19 back here, that is a situation that did not have a
20 clearing and grubbing item.

21 CHAIRMAN COWGER: Mr. Overstreet?

22 MR. OVERSTREET: On this US 41 job that she was
23 referring to that we bid that had a flexible pavement
24 removal item in, there was a very small amount of
25 pavement that was to be removed. And if my memory

1 serves me correctly, the project engineer decided that
2 it wasn't necessary to remove it.

3 On these other two jobs that we're requesting
4 payment for, there was a tremendous amount of flexible
5 pavement to be removed. So that theory about if
6 there's a lot of it you put a pay item in there, well,
7 that's right backwards from these jobs.

8 MS. PICCIRILLI: All the jobs --

9 MR. OVERSTREET: As far as us bidding on jobs
10 over the years that had it in there, that might be
11 true, but as time changes, companies change estimators.

12 The estimator that bid on these jobs back
13 prior -- back in the early '80s, he now works for
14 R. E. Purcell. Just because my company is familiar
15 with how things was back then, that don't mean when
16 I hire a new estimator and he comes up here to put a
17 bid together that he's familiar with how things was
18 done ten years ago. He goes by the bid documents and
19 the plans.

20 That's where the mix-up is. It's not what the
21 Department of Transportation has traditionally done,
22 it's what -- it's the information that we had on these
23 particular two jobs or one job.

24 MS. PICCIRILLI: Is it our responsibility to
25 cater to your estimators?

1 MR. OVERSTREET: It's your responsibility to give
2 us enough information in that bid package to bid the
3 job correctly, yes.

4 CHAIRMAN COWGER: Mr. Vance, do you do the
5 estimating for Overstreet now?

6 MR. VANCE: Yes, sir.

7 CHAIRMAN COWGER: Did you do the estimating for
8 this project that's in question here today?

9 MR. VANCE: Yes, sir.

10 CHAIRMAN COWGER: Have you ever during your time
11 of doing estimating on DOT projects ever encountered
12 this pay item, removal of existing flexible pavement?

13 MR. VANCE: No, sir. No, sir. In Mr. Adderley's
14 letter that Sandy referred to, I'm trying to find it
15 here, he just says that historically the DOT has used
16 that pay item for the removal of concrete pavement. He
17 specifies portland cement pavement.

18 But there's really no place in any of the
19 documents that we had or that I had at the time this
20 job was bid, and this was the first job that I did bid
21 for Overstreet Paving, the one in question. There was
22 nothing that would indicate anything other than the
23 pavement to be removed being just as it's specified to
24 be right here.

25 MR. MOREFIELD: Let me if I can interject. What

1 I see the issue is the definition of concrete pavement.

2 MR. VANCE: True.

3 MR. MOREFIELD: Because the plans are clear in
4 what can be paid for under existing pavement. It says
5 existing concrete pavement, concrete, sidewalk, slope
6 pavement. So really it's clear as far as what was
7 intended, it's just the definition of what you're
8 saying versus what the Department is saying. You're
9 saying concrete is asphalt and they're saying it isn't.

10 MR. VANCE: The spec book allows for two types of
11 concrete pavement.

12 MR. MOREFIELD: No, I'm into removal of existing
13 pavement. It says existing concrete pavement. So
14 that's really the definition. If it was to include
15 just portland cement concrete pavement, you're wrong,
16 they're right. If it includes asphalt --

17 MR. VANCE: That's correct.

18 MR. MOREFIELD: -- they're wrong, you're right.

19 MR. MOREFIELD: Cut through the chafe here and
20 get the definition.

21 CHAIRMAN COWGER: Why don't we let DOT go ahead
22 and finish their presentation unless there's something
23 burning that the contractor has to comment on. Then we
24 will go into further discussion most likely.

25 MS. PICCIRILLI: I would like to go to the

1 project's specific pay items and how they were
2 determined. I think I can also address Mr. Vance's
3 question that he just stated in this particular
4 section.

5 The first thing I would like to do, this is a
6 copy of the comp book page for clearing and grubbing on
7 this project. This is the item 3A-1.

8 Once again this is just to reiterate the project
9 specific that the concept that the DOT had when they
10 did these estimates and these quantities is they based
11 on overall areas. You can look under the miscellaneous
12 items column and it says friction course, sod, seed,
13 mulch.

14 So that was what was included in their clearing
15 and grubbing. This is where Frank brought up the fact
16 that you can see in the cloud, DOT paid for 22.291
17 acres, clearing and grubbing, versus the 21.7 acres
18 that was originally bid.

19 So, nowhere in here is there an exception for the
20 flexible pavement area that's in question.

21 You know, if they felt that flexible pavement
22 should have been paid on bid item 110-4, there should
23 have been an exception to this part. They've gotten
24 paid to clear and grub that flexible pavement that's in
25 discussion there.

1 The next thing I think is also very convincing is
2 the -- this is a copy from the documents of the typical
3 sections. In this typical section it shows very
4 explicitly the limits of standard clearing and
5 grubbing, which is Section 110-2 of the specifications.
6 It shows -- and it even shows an exception for that
7 part of the roadway that was to remain, that was not to
8 be included in standard clearing and grubbing.

9 MR. PROCH: I would like to reiterate to this,
10 this is part of the big package that section is from.

11 MS. PICCIRILLI: This is from the contract
12 document. This is part -- this paper right here is
13 part of the bidding documents. I mean I don't think
14 you could get any clearer than this. It doesn't even
15 say just clearing and grubbing. It says standard
16 clearing and grubbing, which is the identical title of
17 the Section 110-2 in the specifications. It even shows
18 the exceptions in the parts we were not including in
19 clearing and grubbing.

20 If there were any questions based on this
21 specification, I think this typical section shows it
22 exactly the limits of the clearing and grubbing that we
23 had on this project.

24 Finally I would like to go to the next exhibit,
25 which is the removal of existing pavement. If you will

1 remember, I didn't read it, but on the basis of the
2 estimates manual it says this particular quantity
3 computation when originally determined needs to be
4 detailed calculations.

5 You can see that the only thing that the
6 Department interpreted as being part of removal of
7 existing pavement, pay item 110-4, was the curb and
8 gutter, as is stated in the specifications.

9 That was the only portland cement concrete item
10 on that job.

11 MR. VANCE: Can I ask a question?

12 MS. PICCIRILLI: Certainly.

13 MR. VANCE: Is that portland cement concrete
14 pavement that was in the job included in the area of
15 the standard clearing and grubbing? It is within the
16 roadway right-of-way, isn't it? No different than the
17 flexible pavement. They're both within the standard
18 roadway right-of-way.

19 MS. PICCIRILLI: But the thing is it shows the
20 exception.

21 MR. VANCE: It shows the exception for the curb?

22 MS. PICCIRILLI: I don't think the curb is shown
23 in that typical section.

24 MR. VANCE: So it would be included in the
25 acreage, just like the flexible pavement would have

1 been included in the acreage? Am I right?

2 MS. PICCIRILLI: I would have to look at the
3 sections because there may be exceptions.

4 MR. VANCE: The reduced plan tell you you can't
5 scale off. The only way you can determine quantities
6 is off the quantities that have been provided to you
7 from the Department.

8 MS. PICCIRILLI: Let me continue --

9 MR. VANCE: One more thing. And the quantities
10 for the standard clearing and grubbing and the acreage,
11 now when we did our final acceptance of the job, the
12 final acceptance was done pending this claim.

13 So as far as saying we have been paid under the
14 acreage item, it was all included in this claim, even
15 though we were paid for the acreage item. The claim is
16 still in existence.

17 The engineer's computation sheets are not part of
18 the bid documents. We don't have those at this point
19 in time. In fact, it's hard to get them after you
20 start the job. Okay? So all these things shown are
21 not available at the time when you bid the job.

22 MS. PICCIRILLI: They are available.

23 MR. VANCE: The engineer's computations aren't.

24 MS. PICCIRILLI: The manual of estimates is
25 available to the contractors.

1 MR. CHANCE: The basic manual is available to all
2 contractors.

3 MR. VANCE: I understand it's available but it's
4 not referenced on there.

5 MR. CHANCE: The majority of all contractors'
6 estimators would want -- if you're an estimator with a
7 contractor, you would know about that publication and
8 you would want it, I would think, to assist you with
9 your estimating.

10 It's certainly not anything that's given to you
11 when you bid the job, but it is available. And most
12 all contractors' estimators have a basis of estimates
13 manual.

14 MR. MOREFIELD: How did you make that aware to
15 the contractor that that manual exists?

16 MR. CHANCE: We sent out letters to the Florida
17 Builders Association.

18 MR. MOREFIELD: To individual contractors?

19 MR. CHANCE: Right.

20 MR. MOREFIELD: Did they get one?

21 MR. CHANCE: Well --

22 MR. VANCE: When was it sent out?

23 MR. CHANCE: It's been sent out numerous times in
24 the past. I do not know the last -- usually every year
25 when we update it.

1 MR. VANCE: Do you have to be a member of Florida
2 Transportation Builders to receive one?

3 MR. CHANCE: That may be a possibility. However,
4 we did send it to all the association members.

5 CHAIRMAN COWGER: I think we have heard enough on
6 that issue for the Board to comprehend it except for
7 one question, Mr. Chance.

8 To the best of your knowledge was this memorandum
9 that you're talking about making contractors aware that
10 they can obtain copies of your basis of estimates
11 manual sent out to all of the qualified bidders at any
12 time or was it through the association?

13 MR. CHANCE: Mr. Cowger, I can't answer that for
14 sure.

15 CHAIRMAN COWGER: Do you think probably through
16 the association, though?

17 MR. CHANCE: I think it may have been just
18 through the association.

19 CHAIRMAN COWGER: That's all I needed to know.

20 MR. PROCH: Mr. Vance, when did you notice you
21 had a problem with this bid item?

22 MR. VANCE: I think it was after the review of
23 the first or second pay estimate. Somewhere in that
24 range of the April 24th time.

25 MR. PROCH: If you did notice you had such a big

1 bust on this item, why would you bid the job in August
2 of '89?

3 MR. OVERSTREET: It was after we started the job.
4 We got paid on one of them for one job and then they
5 deducted in the next estimate. They paid us one month
6 for the removal of the pavement on one of the two jobs,
7 then deducted it from the next pay estimate.

8 CHAIRMAN COWGER: Let me ask you a question.
9 These were two jobs running at approximately the same
10 point in time?

11 MR. OVERSTREET: Yes, sir.

12 CHAIRMAN COWGER: You're saying that either on
13 this job or a parallel job, the project engineer on the
14 first estimate or two or for an estimate or two paid
15 you for the removal of existing pavement under removal
16 of existing asphalt pavement under the removal of
17 existing pavement item and then later cut that back and
18 removed that payment?

19 MR. OVERSTREET: Right.

20 MR. VANCE: Saying he made a mistake, he
21 shouldn't have paid us for it.

22 CHAIRMAN COWGER: You're not sure whether that
23 was this job or another job?

24 MR. VANCE: I don't --

25 MS. PICCIRILLI: I don't think it was this job.

1 I looked at the estimates and I don't think it was.

2 The last thing I want to address is what
3 Mr. Vance just led into. The fact that he feels the
4 only information he has available to him is the
5 quantities the Department gives to him at bidding.

6 First of all, let me say this. I don't know any
7 estimator that just takes these quantities given by the
8 Department and uses them to prepare the bid. I don't
9 know of any contractor who does that. Typically they
10 go through and confirm the quantities.

11 My next section is the plan discrepancy. You can
12 see in Exhibit 4A-1, this is a copy of Overstreet's
13 bid for this project. You can see it clearly states
14 clearing and grubbing, item number 110-2 is 21.7 acres.
15 That's what Overstreet bid.

16 You can also see under item 110-4, removal of
17 existing pavement, they bid on 469 square yards of
18 removal of existing pavement.

19 This project as you can see was let in August of
20 '89. Work began January of '90. This letter was sent
21 April of '90. So this project -- in eight months --
22 they had seen these contract documents for eight months
23 and it wasn't until that time that they had determined
24 there was a possible -- an alleged error.

25 It amazes me of the fact that we're talking of an

1 overrun of 17,244 square yards from an original 469
2 square yards of removal of pavement. I would think
3 during the bidding process someone would find an error
4 of 17,244 square yards. A flag would have been brought
5 up at that point.

6 Even at that point once you were awarded the
7 contract, I mean we're talking 34 times the original
8 bid amount in error on an item.

9 I think -- you know, it would have been
10 questioned during bidding, and at that point you could
11 go to your -- I feel it was almost the contractor's
12 responsibility if there was such a -- in their eyes if
13 there was such an alleged flagrant error under the
14 general requirement of Section 5-4, which is my last
15 section of the exhibit.

16 It says, "The contractor shall take no advantage
17 of any apparent error or omission which he may discover
18 in the plans and specifications but shall forthwith
19 notify the engineer of such discovery, who will then
20 make such corrections and interpretations as he deems
21 necessary reflecting the actual spirit and intent of
22 the plans and specifications."

23 I think the key word there is "interpretation."
24 We're talking 34 times the original contract amount.
25 I think somebody would have called and said, gee, is

1 there a problem here? And at that point the Department
2 would obviously have given our interpretation of that
3 particular pay item.

4 I mean that's the contractor's responsibility
5 to -- if an apparent error, flagrant error of this
6 magnitude is found, to call us and say, you know, is
7 there a problem with that pay item? You know, am
8 I misinterpreting how this pay item was determined?
9 This was never done until that April 24, 1990 letter.

10 I think the thing that the Department is trying
11 to say is the fact that this has never been an issue.
12 I will guarantee District VII has had projects with
13 more removal of flexible pavement on a project than
14 this particular project in question.

15 And we have never, ever had this specification
16 challenged. I know we've had projects with more
17 flexible pavement removal than this job. It's never
18 been challenged except for these two projects by
19 Overstreet.

20 Just briefly, one of the reasons Lex is here is
21 just to discuss, to further reinforce my point
22 statewide this has never been challenged.

23 CHAIRMAN COWGER: Before Lex starts, let me ask
24 you a question. You said that Overstreet has never
25 raised this sort of claim prior to the time that these

1 two claims that they've made that you discussed came
2 up. Has any other contractor ever claimed?

3 MS. PICCIRILLI: Never. At least I should say
4 not to my knowledge. I can't say never. There's a
5 possibility. I'm only in District VII. It may have
6 occurred in other districts, but to the best of my
7 knowledge it has never occurred.

8 CHAIRMAN COWGER: Do any of the other DOT people
9 present know of other claims on this submitted by
10 another contractor?

11 MR. CHANCE: I have been working in the state
12 estimates office for the last 22 and a half years.
13 I would say I'm fairly familiar with final estimates
14 processing for -- well, have been intimately involved
15 for the last five to ten years.

16 We have never to my knowledge paid for flexible
17 pavement under item 110-4. It's never been a question
18 until these two jobs, never has been.

19 As Sandy pointed out earlier, we have had
20 numerous jobs that were bid in the same manner as those
21 two jobs and it's never been an issue. Flexible
22 pavement removal is routinely paid for under the
23 clearing and grubbing item. It's never been questioned
24 before.

25 We do use and have paid for special item 110-70

1 which specifically says removal of flexible pavement.
2 That item has been used quite extensively by the
3 Department and paid for on that basis.

4 MR. PROCH: I know of no other case either. Even
5 if you have, just like laying a pipe item on a flexible
6 pavement road, even the removal of that is included in
7 the cost of the pipe.

8 But if it's rigid pavement, like portland
9 concrete, you will pay by the square yard. The
10 definition of concrete pavement is really defined.
11 I just asked my ten-year-old kid over the weekend, if
12 I was building a 32-story building and I called for
13 concrete to come out on the job, would you get asphalt
14 or concrete. She said daddy, you would get concrete.
15 I think my ten-year-old definitely knows the difference
16 between them.

17 MS. PICCIRILLI: What is important is the
18 contractors' industry has a large turnover of
19 estimators. It's just not Overstreet. I guess the
20 thing is the Department feels Overstreet was definitely
21 aware of the fact that we did have a separate pay item
22 for removal of flexible pavement. Mr. Vance may not
23 have been, but that's not the Department's
24 responsibility.

25 Mr. Overstreet is definitely aware of that fact,

1 that we have had that removal of flexible pavement and
2 that we use it when we need it. I think that's the
3 important thing, that they're aware of the fact it's
4 there. If we were going to pay for it, it would be
5 paid for under that separate bid item.

6 The whole reason we have the removal of existing
7 pavement bid item is due to the fact it's concrete,
8 takes more work, is harder to dispose of, needs to be
9 broken up. That's the whole reason we have it.

10 CHAIRMAN COWGER: Okay. I think -- I've got
11 two or three questions. Maybe Board members do, too.

12 Before we get into that, since some statements
13 have been made about what the contractor knew and
14 didn't know, I would like for the contractor to have
15 an opportunity at this point to rebut that if you so
16 desire.

17 MR. OVERSTREET: Well, again like I said a while
18 ago, what I know and what my estimator knows is two
19 different things. I think that regardless of who is
20 bidding on the job, whether it's a State job, county
21 job, private job or what kind of job it is, if you give
22 a contractor a set of plans and specifications, well,
23 there should be enough information in that set of plans
24 and specifications for him to bid the job accurately.

25 Sandy is saying that all of the contractors in

1 the state of Florida knows the specifications. Well,
2 most of us do.

3 But what if you had a contractor from New York
4 that all of a sudden he decided he wanted to bid a job
5 down here, he got prequalified, he bid one job, he
6 wouldn't know all of the stuff that all of the
7 contractors that's been bidding who have worked for the
8 State of Florida for the last 20 years have known. So
9 he would be in the same disadvantage Mr. Vance was when
10 he bid this job.

11 If you don't give them the information in the bid
12 package, if there's a job out there that they want to
13 bid on, they're not going to go back, go to the -- come
14 up here to Tallahassee and ask these people up here to
15 give me every document you've got in all of these
16 buildings up here to back up your specifications and
17 then take all the time to study them so they're
18 familiar with them to build a job.

19 MS. PICCIRILLI: I guarantee you if they found
20 a 34 times increase in the quantity, they would have
21 called the Department and asked why.

22 MR. OVERSTREET: They probably would have, but
23 you're saying every contractor verifies every one of
24 the quantities on that job, that's not true either. We
25 don't verify every quantity on that job. I agree if

1 there's a mistake that big, it should be caught. I'll
2 agree to that. But we don't verify every square inch
3 or every square yard of everything that's bid on that
4 job.

5 When you come up here to bid two or three or four
6 or five, six jobs at the time, can you imagine how much
7 time that takes to do everything just like you're
8 saying, and then you said we had all those months to
9 catch it afterwards.

10 Well, we don't do much with a job once we're low
11 bidder on it until the prebid conference is set. Then
12 we get back in the job, which that's usually, what, 60
13 days before they set that, then another 30 days or so
14 before the job starts. We have other things to do.
15 Once we're low bidder on the job, we can't just go
16 through that every day for the next 60 days or so.

17 MR. VANCE: We didn't realize there was a problem
18 until we didn't get paid either.

19 MR. OVERSTREET: That's when we realized there
20 was a problem, when we didn't get paid like we thought
21 we were supposed to get paid.

22 MS. PICCIRILLI: As an estimator, you felt -- you
23 said this, you felt when you estimated this project,
24 the flexible pavement was included. I would have
25 thought 469 square yards of removal of existing

1 pavement as an estimator, I mean I would just have to
2 look at that quantity and say, well, that can't be
3 right, no way.

4 MR. VANCE: Sandy, look at the --

5 MS. PICCIRILLI: Let me finish. If I was a
6 contractor coming in from another state, I would make
7 sure I knew how the Department obtained those numbers
8 when I would go to bid. I would check -- if I had
9 never bid in this state, the first thing I would want
10 to do is get a copy of their specifications, get a copy
11 of how they came up with these pay items.

12 It doesn't say in the specifications explicitly
13 how every single item is determined. Like I say, if
14 I found a 34 times mistake in an item --

15 CHAIRMAN COWGER: The Board has decided that we
16 have heard enough on that particular discussion going
17 back and forth. Opinions have gotten into the thing.
18 I think we have enough facts to base our decision on.

19 Let me ask you a couple of questions right quick
20 if I could. There was some discussion or some
21 testimony dealing with plan notes. I have glanced
22 through the plans and I see no notes anywhere that deal
23 with removal of existing pavement of any kind. Is that
24 correct?

25 MR. VANCE: It's not on these plans. It was on

1 the plans for the other job.

2 CHAIRMAN COWGER: Okay.

3 MS. PICCIRILLI: May I say that we need to note
4 in Mr. Purcell's deposition that is also contained
5 referring to this project. In preparing our bid I saw
6 the contract documents notation which indicate removal
7 of existing pavement. These notes identify areas of
8 asphalt pavement that need to be removed. It's
9 referred to this project. So is this deposition
10 consistent with the contract documents?

11 CHAIRMAN COWGER: You're saying that particular
12 statement is not true?

13 MS. PICCIRILLI: Not in reference to this
14 project, it's not.

15 CHAIRMAN COWGER: He said he was bidding this
16 particular project, item number 2. Is there any
17 rebuttal of that?

18 I think we have established there were no notes
19 on the plans showing removal of any kind of existing
20 pavement. If there's no dispute of that, that's all we
21 need to know.

22 MR. VANCE: Purcell's affidavit does not refer to
23 the plans.

24 MS. PICCIRILLI: It refers to notations on --

25 MR. VANCE: On contract documents.

1 MS. PICCIRILLI: Are there any for this project
2 that say removal of existing pavement?

3 MR. VANCE: Yes, there's a removal of existing
4 pavement pay item.

5 CHAIRMAN COWGER: We're not going to argue about
6 that anymore. The Board understands that. We're going
7 to cut that off.

8 Are there any plan notes, special provisions,
9 supplemental specifications in this contract that
10 modify Section 110, clearing and grubbing of the
11 specifications, that would affect this particular
12 issue?

13 MS. PICCIRILLI: I don't recall.

14 MR. PROCH: To the best of our knowledge, no.

15 CHAIRMAN COWGER: I don't see any. I have been
16 through that. We are going to accept that.

17 I have a question then about the bid unit price
18 for clearing and grubbing. We had on this project as
19 I understand it, from looking at the estimate of
20 construction number 10 which was Exhibit 4A-1 that the
21 plan quantity was 21.7 acres of clearing and grubbing
22 and the contractor bid that at a unit price of \$2,308.
23 Is that correct?

24 MR. PROCH: Yes, sir.

25 CHAIRMAN COWGER: All right. Now, what was the

1 extent, if we take out -- we're not going to talk about
2 removal of any pavement. If we get beyond that, what
3 was the extent of the work effort required of the
4 contractor then to do the clearing and grubbing?

5 As I see the thing, looking at these plans, this
6 project essentially consisted of four-laning a section
7 of two-lane pavement? Is that correct?

8 MR. PROCH: It's removing a railroad overpass and
9 removing the embankment portion of the roadway to flat
10 grade, level roadway grade.

11 MS. PICCIRILLI: It was an existing overpass over
12 an abandoned railroad.

13 MR. PROCH: We paid for the removal of existing
14 structures as a separate pay item.

15 CHAIRMAN COWGER: Was this on 301-98 in the Dade
16 City area?

17 MR. PROCH: Yes, sir, north of Dade City.

18 CHAIRMAN COWGER: Was it a two or four-lane
19 facility?

20 MR. PROCH: Four-lane.

21 CHAIRMAN COWGER: You removed all the bridges
22 that existed over the railroad and were bringing the
23 pavement down to essentially a more normal grade?

24 MR. PROCH: Yes, sir. I think the plan sheets
25 will show you that.

1 CHAIRMAN COWGER: My question is to what extent
2 did the contractor have to do any clearing and grubbing
3 that would have been included in that \$2,308 per acre
4 price?

5 MR. PROCH: It's as shown on the typical section
6 of the plans, standard clearing and grubbing, Exhibit
7 3A-3.

8 Just to reiterate what Mr. Vance said, it does
9 not show our 469 cubic yards of removal of pavement
10 there. Also, we have a job that has wrap material on
11 it and we remove the square yards of the wrap item.
12 That same area of roadway portion is included in
13 standard clearing and grubbing, too. That's immaterial
14 that we would actually break out something in this item
15 shown.

16 MR. VANCE: Excuse me, Frank. What I was saying
17 is that the removal of concrete or portland cement
18 concrete pavement, Sandy was saying we had been paid
19 for the 22 acres and you said we were paid for the 22
20 acres, but specifically included in that, and you just
21 brought it up, was the structure was included in that
22 22 acres. So was the portland cement concrete included
23 in the 22 acres.

24 And in the same reality so was the asphaltic
25 concrete. They're all the same. You can't break them

1 out to favor one side and not favor the other.

2 MR. PROCH: But we're paying you for that same
3 item in the clearing and grubbing. Usually clearing
4 and grubbing is a lump sum. He was paid and accepted
5 it acreage-wise.

6 MR. OVERSTREET: The way I interpreted it, what
7 Sandy said, since the flexible pavement was shown in
8 that detail there of the clearing and grubbing, we
9 should have known that it was going to be paid for
10 under the clearing and grubbing and not under the
11 pavement removal item.

12 Well, you know, is that what you were implying?

13 MS. PICCIRILLI: What I'm saying is if you take
14 the area of the top of the curb that's out there, 469
15 square yards, and I will guarantee you, and deduct that
16 from the acreage of standard clearing and grubbing, you
17 won't see a significant difference there.

18 Now if we did have an area where we were going to
19 pay for the removal of flexible pavement, it would have
20 been deducted from the clearing and grubbing. Final
21 estimates would have paid for it twice.

22 MR. OVERSTREET: It wouldn't have been deducted
23 on that because you are saying you didn't deduct
24 anything else paid for separate.

25 MR. VANCE: It's the structure, the structure --

1 CHAIRMAN COWGER: I think we've got everything we
2 need to know. We're down to arguing.

3 A couple of quick questions. First off, was
4 there any concrete pavement to be removed on this
5 project, concrete pavement? I don't think there was.

6 MR. PROCH: Concrete pavement?

7 CHAIRMAN COWGER: Roadway pavement.

8 MR. OVERSTREET: There was a little bit of curb.

9 CHAIRMAN COWGER: Okay. I think the answer is
10 no.

11 MS. PICCIRILLI: Is that asphaltic concrete
12 pavement or --

13 CHAIRMAN COWGER: Was there any portland cement
14 concrete pavement to be removed?

15 MR. OVERSTREET: No, sir.

16 CHAIRMAN COWGER: Now the other point I wanted to
17 make was to clarify what we were talking about, the
18 extent of the project here. As I understand, what
19 existed there was a two-lane road with an overpass
20 that went over the railroad track.

21 And this project consisted of removing the
22 overpass, removing the approach fills for that lane,
23 constructing a road through there, a new road, and then
24 at the same time constructing a parallel two-lane
25 facility to make the completed facility a four-lane at

1 grade facility.

2 MR. OVERSTREET: It was actually -- to start
3 with, it was a four-lane facility with -- it was a
4 divided four-lane facility that went over the railroad
5 track. There was actually three bridges involved in it
6 that we tore down and done away with and wound up with
7 a flat four-lane roadway. But it was an existing
8 four-lane to start with.

9 MR. MOREFIELD: You just took out the approaches
10 and everything and dropped everything down?

11 MR. OVERSTREET: That's right.

12 MR. MOREFIELD: And the portion up here is where
13 the pavement is that's in question?

14 MR. OVERSTREET: Right, the ramps going up to the
15 bridge and so forth.

16 CHAIRMAN COWGER: The pavement in dispute
17 essentially is the existing asphalt pavement that was
18 removed?

19 MR. OVERSTREET: That's right.

20 MR. PROCH: That's from station 35 to station 57.

21 CHAIRMAN COWGER: Okay. I've had all my
22 questions answered.

23 Mr. Morefield, do you have any further questions?

24 MR. MOREFIELD: No.

25 CHAIRMAN COWGER: Mr. Roebuck?

1 MR. ROEBUCK: You mentioned, Lex, in a quantity
2 item, how much flexible pavement in quantity would it
3 take for you to put that bid item 70 in?

4 MR. CHANCE: I'm not the one that determines
5 that. Our designers would do that. I was just
6 commenting that it was based on what I had observed.
7 As far as being qualified to answer that, I couldn't.

8 CHAIRMAN COWGER: Does either party have any
9 additional statements they wish to make?

10 MS. PICCIRILLI: No, sir.

11 MR. VANCE: I have just one. We refer to
12 quantities and overruns. On that project as far as
13 quantities and what you can determine from the plans
14 and what you cannot, we had eight items that some were
15 significantly overrun. Barricades overran 8500. The
16 Type B stabilization overran 800 yards. The optional
17 base overran a thousand yards, the friction course
18 overran a thousand yards.

19 It was, especially when you're talking about
20 acreage, on plans that have been reduced in size, and
21 there's a notation, they're telling you they've been
22 reduced in size and you've got a variable right-of-way
23 in there, you really cannot determine acreage off of --
24 by measuring the plans. It's not possible.

25 You can come close. The pay item quantity for

1 removal of pavement was an offered quantity, and that's
2 what it was bid against, was against the offered
3 quantity.

4 CHAIRMAN COWGER: Okay. I think, unless somebody
5 has something else they want to bring up, we're going
6 to close it out.

7 MR. OVERSTREET: Excuse me, that question you
8 just asked, this job that they referred to that we was
9 low bidder on, it had a removable of flexible pavement
10 item of 309 square yards.

11 MR. CHANCE: But you didn't have a clearing and
12 grubbing item on that job.

13 MS. PICCIRILLI: There was no clearing and
14 grubbing on that job.

15 MR. OVERSTREET: I don't see one.

16 CHAIRMAN COWGER: I think we understand that. We
17 are going to close out the testimony. This hearing is
18 hereby closed. The Board will meet sometime in January
19 to deliberate on this claim and you will have our order
20 shortly thereafter.

21 MR. OVERSTREET: Thank you, sir.

22 (Whereupon, the hearing was concluded at 10:20 a.m.)
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CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
COUNTY OF LEON)

I CATHERINE WILKINSON, Certified Shorthand 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 49 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 3rd day of January,
A.D., 1992, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,
STATE OF FLORIDA.

Catherine Wilkinson

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

My Commission Expires June 27, 1994