

STATE ARBITRATION BOARD
1022 LOTHIAN DRIVE
TALLAHASSEE, FL 32312-2837
PHONE: (904) 385-2852 OR (904) 942-0781 FAX: (904) 942-5632

28 July 1993

NOTICE

In the case of Sieg & Sons, Inc. versus the Florida Department of Transportation on Project No. 15170-3452 in Pinellas County, Florida, both parties are advised that State Arbitration Board Order No. 4-93 has been properly filed on July 26, 1993.



H. Eugene Cowger, PE
Chairman & Clerk, S.A.B.

S.A.B. CLERK

JUL 26 1993

FILED

Copies of Order & Transcript to:

Mr. J.B. Lairscey, Jr., Director, Office of Construction/FDOT
Mr. Charles E. Sieg, Vice President/Sieg & Sons, Inc.

S.A.B. CLERK

JUL 26 1993

FILED

STATE ARBITRATION BOARD

ORDER NO. 4-93

RE:

Request for Arbitration by
Sieg and Sons, Inc. on
Job No. 15170-3452 in
Pinellas County

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

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

Pursuant to a written notice, a hearing was held on a
request for arbitration commencing at 9:55 a.m. Wednesday,
June 2, 1993.

The Board Members, having fully considered the evidence
presented at the hearing, now enter their order No. 4-93 in
this cause.

ORDER

The Contractor presented a request for arbitration of
a five part claim for additional compensation and release of
liquidated damages in a total amount of \$145,997.62 plus
interest at the rate of one percent per month.

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

PART I Amount \$ 85,098.00

1. We did not receive compensation for furnishing and
installing the 1/2" copper cable required as a down line from
the air terminals to the grounding electrodes (rods)

installed for lightning protection of special facilities. Our bid for this project was based on receiving separate payment for this 1/2" cable under the pay item Cable (Copper Strap) (Item A632-8-111). Our bid for the pay item Lightning Protection System (Item A750-711-104) included only the costs associated with furnishing and installing an air terminal at each special facility.

2. It is our position that there is an oversight in the plans and specifications, because no consideration was given to installation of the 1/2" copper cable. Our position is supported by:

- a. The only mention of the 1/2" cable in the plans is part of an incidental plan note on Sheet R-7.
- b. The plans do not contain a material specification for the 1/2" copper cable or details for attaching it to the structure.
- c. Except for the pay item Aluminum Pipe, the plans and specifications do not contain definitions of pay items.
- d. The plans provide that, at some locations, a common downline (1/2" cable) can be used for more than one special facility. In light of this situation, it is not logical to include the cost of the 1/2" cable in the same pay item (Lightning Protection System) as the air terminal.
- e. The 1/2" copper cable used in Lightning Protection of Towers (at the top of towers) was paid for separately under the item Cable (Copper Strap).

f. The Department of Transportation, in granting a 30 day extension of the allowable contract time for the time it took to fasten the 1/2" cable to the structure, gave recognition that the plans failed to recognize the need to install a 1/2" grounding cable at special facilities.

3. We are claiming compensation for the 3,273 lineal feet of 1/2" copper cable installed at special facilities under the pay item Cable (Copper Strap).

PART II Amount \$27,040.00

1. At the time of the 90% field inspection we were instructed by the Department to reroute certain sections of the 1/2' copper cable at Special Facilities (signs, TV cameras and phones) to provide a more direct path to the ground rod.

2. It is our position that the original installation was not defective, because these runs of cable were constructed in accordance with specifications and code. Also, this work was done under the observation of a Department inspector.

3. We claim additional compensation for 1,040 feet of rerouting at \$26 per lineal foot.

PART III Amount	Release of Liquidated Damages	\$13,340.00
	Field and Home Office Overhead	\$13,340.00
	TOTAL	\$26,680.00

1. The work in the towers was delayed because of the elevator in the North tower being inoperative and service of the elevator in the South tower being inconsistent.

2. The Department recognized the elevator problems as delaying the work and offered to extend the allowable

contact time 30 calendar days as full and final settlement of said delays. We could not accept this offer because the delays caused us to incur additional field and home office overhead costs.

3. We are claiming field office and home office overhead at the rate of \$460 per day, the same rate the Department assessed as liquidated damages. We feel that our daily administrative costs are as much as those of the Department. We are a small company and this job represented a significant portion of our revenue during the time it was under construction.

4. We are also requesting release of 30 days liquidated damages.

PART IV Amount \$4,589.02

1 We are claiming the additional cost incurred by us for maintaining traffic during the 59 days that work was extended due to circumstances beyond our control. (30 CD while installing the 1/2" cable for special facilities plus 29 CD delayed by tower elevators).

2. We calculated the amount claimed by dividing the lump sum amount bid for Maintenance of Traffic by the number of contract days.

3. We find that the daily rates for maintenance of traffic items used by the Department in their calculation of the additional amount due are lower than what we pay.

PART V Amount \$2,500.00

1. The plans call for removal of existing copper wires in

elevator areas of the towers. During the semifinal inspection of the work the Department ordered us to remove existing copper wires in the ladder areas of the towers.

2. The elevator areas and ladder areas are two distinct areas identified as "Elevator Shaft" and "Ladder Shaft".

3. Removal of wire from the ladder areas was conducted as a separate operation.

INTEREST

We are claiming interest on the amount due for our claim at the rate of one percent per month beginning on the date of final acceptance of the project until such time as we receive final payment.

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

PART I

1. The Scope of Work contained in the plans provides for three distinct lightning protection systems, each having its own set of pay items. The Contractor is requesting payment for work in Lightning Protection for Other Facilities system under a pay item used for the other two systems.

2. The pay item Cable (Copper Strap) is not listed in the pay items for the work of Lightning Protection for Other Facilities.

3. Note C-5 on plan sheet R-2 states that the method of installation for each facility (Other Facility) is shown in Detail "H" on sheet R-7. This note ties the 1/2" copper cable

to the work under Lightning Protection for Other Facilities.

4. It is our position that payment for the 1/2" copper cable, as shown in Detail "H" on Sheet R-7 of the plans, is included in the pay item Lightning Protection System (Table 1).

PART II

1. The NFPA Code requires that grounding conductors be installed to provide a direct path to earth and with no sharp bends or narrow loops. The conductors we required to be rerouted did not meet that criteria.

2. We agree that, since we did not apply this strict interpretation of the code until the work was virtually completed, the Contractor is entitled to compensation for the corrective work.

3. The scope of the rerouting work is significantly different from that of furnishing and installing copper strap in the towers. Therefore, compensation at the unit price for Cable (Copper Strap) is not equitable. Since the Contractor would not provide a detailed breakdown of the cost, we calculated the amount due him from the project records and the Contractor's payroll records. That amount is \$5,627.09.

PART III

1. We recognize that the Contractor was delayed by factors under the control of the Department and are willing to extend the allowable contract time for this cause to release liquidated damages assessed for up to 30 days. We are also willing to compensate the Contractor for proven overhead costs he incurred.

2. We are willing to compensate the Contractor in the amount of \$4,513.00 for jobsite overhead (crane rental, lodging, and boat slip rental).

3. We are willing to base home office overhead costs on the Eichleay formula only if there is proof that damages were in fact incurred. The Contractor has not submitted such proof.

PART IV

1. We agree that the Contractor is entitled to the extra maintenance of traffic costs he actually incurred during the time work was extended.

2. We do not agree with the method the Contractor used to calculate his increased costs.

3. We calculate the cost for 59 days based on the statewide average for the items Construction Signs, High Intensity Lights and Arrow Board plus overhead, profit and bond to be \$2,092.46.

PART V

1. The ladder areas and elevator areas of the towers are close enough together to be considered as one area.

2. General Note D-1 covering payment for incidental items is applicable to removal of all existing wire in the towers.

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

PART I

1. The contract documents rely exclusively on the General

Notes contained in the plans to define the work and the basis of compensation. Compensation is not specifically addressed in the General Notes.

2. The General Notes contain inconsistencies such as paying for air terminals on the towers under the pay item Electrical Equipment and on special facilities under the pay item Lightning Protection System.

3. The contract documents do not include a definition of the work to be paid for under the pay item Lightning Protection System.

4. The plans provide no details for attaching the 1/2" copper cable for grounding special facilities to the structure.

5. The Contractor's explanation of how he arrived at his bid unit price for Cable (Copper Strap) is illogical, because he admitted that he did not do a detailed quantity take off on the copper strap and the copper cable until after submitting his bid. The notes of the preconstruction conference state that Mr. Seig pointed out that there could be an error in the plan quantity for Copper Strap.

Approximately four months later he brought to the attention of the Department that the item for Cable was omitted from the General Notes covering Lightning Protection for Other Facilities.

6. In granting a time extension for the time required to fasten the 1/2" copper cable to the structure, the Department recognized that this work was not covered in the plans.

PART III

The Contractor did not submit documentation of home office overhead incurred.

PART V

In Department Exhibit No. 5 at Tab 5 it is stated "The Department does not dispute the explicit language of the note, "elevator areas" and does conceded that this is an elevator access area and a ladder access area to the top. It was the intent of the note to install a new system in both towers and remove the existing system." The "intent" was not clearly expressed in the plan note.

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

The Department of Transportation is ordered to compensate the Contractor for each part of his claim as follows:

PART I \$40,000.00

PART II \$12,000.00

PART III \$9,500.00 and release all liquidated damages assessed on this contract.

PART IV \$3,000.00

PART V \$1,000.00

INTEREST ON THE ABOVE AMOUNTS INCLUDING LIQUIDATED DAMAGES

\$8,419.40

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$257.30 for Court Reporting Costs.

Tallahassee, Florida

Dated: 26 July 1993

Certified Copy:

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

26 July 1993
Date

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

K. N. Morefield
K. N. Morefield, P. E.
Member

John P. Roebuck
John P. Roebuck
Member

S.A.B. CLERK

JUL 26 1993

FILED

STATE ARBITRATION BOARD
STATE OF FLORIDA

S.A.B. CLERK

JUL 26 1993

FILED

SIEG & SONS, INC.)

)

)

)

)

PROJECT NO. 15170-3452

- and -)

)

LOCATION: Sunshine Skyway
Bridge, Florida

)

)

DEPARTMENT OF TRANSPORTATION)

)

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Wednesday, June 2, 1993

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

TIME: Commenced at 9:55 a.m.
Concluded at 11:15 a.m.

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

WILKINSON & ASSOCIATES
Certified Court Reporters
Post Office Box 13461
Tallahassee, Florida 32317

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

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

APPEARING ON BEHALF OF SIEG & SONS, INC.:

Mr. Jim Sieg
 Mr. Chuck Sieg

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Steve Womble
 Mr. Fred Johnson
 Mr. Stan Robbins
 Mr. George Brown
 Mr. Mike Irwin

* * *

I N D E X

EXHIBITS	PAGE
Exhibit Nos. 1 through 5 in evidence	4
CERTIFICATE OF REPORTER	53

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 337.185 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. Cowger, to
11 serve as the third member of the Board and as chairman.

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

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

17 (Whereupon, all witnesses were duly sworn.)

18 CHAIRMAN COWGER: The documents which put this
19 arbitration hearing into being are hereby introduced as
20 Exhibit No. 1. They consist of the request for
21 arbitration submitted by the contractor and all of the
22 information that was attached to the request. And the
23 DOT was furnished a copy of all of that information
24 with the notice of hearing.

25 Does either party have any other information it

1 wishes to put into the record as an exhibit? We will
2 go off the record a minute.

3 (Discussion off the record)

4 CHAIRMAN COWGER: Back on the record. While we
5 were off the record, there was a discussion of
6 exhibits. I will now identify the exhibits. The
7 contractor's exhibit, which we will identify as
8 Exhibit No. 2, is a letter dated June 1, 1993, to the
9 Board, amending the claim.

10 Exhibit No. 2 -- 3, excuse me, No. 3 is some
11 copies out of a computation booklet prepared by DOT.
12 Am I correct? That's where these came from?

13 MR. IRWIN: Yes, sir.

14 CHAIRMAN COWGER: Exhibit 4 will be some copies
15 of the project bid blank. And those were all submitted
16 by the contractor.

17 And then Exhibit 5 will be a notebook of
18 information submitted by the Department of
19 Transportation.

20 (Whereupon, Exhibit Nos. 1 through 5 were received in
21 evidence.)

22 CHAIRMAN COWGER: Does either party need
23 additional time to examine the exhibits?

24 MR. ROBBINS: No, sir.

25 CHAIRMAN COWGER: Hearing nothing, I will go on.

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

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

15 The hearing will be conducted in an informal
16 manner. The contractor will elaborate on their claim,
17 and then the DOT will offer rebuttal.

18 Either party may interrupt to bring out a point
19 by coming through the Chairman. However, for the sake
20 of order, I must instruct that only one person speak at
21 a time.

22 Also, so that we can be assured that our court
23 reporter will be able to produce an accurate record of
24 this hearing, please introduce yourself the first time
25 you speak.

1 It is appropriate at this time for the contractor
2 to begin an opening statement in regard to his claim.
3 The Board requests that the first statement you make is
4 the total amount of your claim, if you will, please.

5 MR. JIM SIEG: There are four or five items. Do
6 you want the total amount of the four or five items?

7 CHAIRMAN COWGER: Correct.

8 MR. ROEBUCK: I think the DOT has them totaled in
9 the back of their book.

10 MR. CHUCK SIEG: We can look at their numbers.
11 I have them all individually.

12 MR. ROEBUCK: Is this your number?

13 MR. JIM SIEG: Yes, it's \$145,997.62. We have
14 since amended that to include interest.

15 CHAIRMAN COWGER: Read that number one more time.

16 MR. JIM SIEG: \$145,997.62.

17 CHAIRMAN COWGER: Plus interest?

18 MR. JIM SIEG: Yes, sir.

19 CHAIRMAN COWGER: In the amount of 1 percent per
20 month. Okay. I've got you. That's all we needed
21 there.

22 Before you start, let me ask a question of DOT,
23 if I could, a procedural question. Looking at the time
24 analysis sheet that the contractor submitted, it shows
25 the original contract time being 45 days and then it

1 shows a 30-day time extension being granted to make 75
2 days allowable contract time.

3 I want to know what was the basis for the 30 days
4 that were granted. Can someone just tell me briefly?

5 MR. IRWIN: The 30 days was for the elevator.

6 CHAIRMAN COWGER: Inoperative elevator?

7 MR. IRWIN: That was the second --

8 MR. ROEBUCK: That was the one that was not
9 allowed.

10 MR. BROWN: The first one was for the attachment
11 procedure that he used to attach the half-inch cable to
12 the bridge substructure on the Skyway.

13 MR. ROEBUCK: Is that right?

14 MR. JIM SIEG: Yes, sir, the additional 30 days
15 necessary for the work to install the cable.

16 CHAIRMAN COWGER: And no other time at this point
17 has been granted, is that correct?

18 MR. IRWIN: There was a supplemental agreement
19 that had it five days.

20 MR. BROWN: Right, five days for supplemental
21 agreement.

22 MR. IRWIN: There was weather time of eight days.
23 So the total authorized time now is 88 days.

24 CHAIRMAN COWGER: Okay. I think we can handle it
25 from there on. If we have any further questions, we

1 will come back to that. I wanted to get that out.
2 I didn't want to interrupt you as you started. Go
3 ahead.

4 MR. JIM SIEG: I have some -- this is my first
5 shot at any of this stuff, so if you folks will bear
6 with me, I will appreciate it. I don't really know how
7 to get through it.

8 One of the -- the first thing on my list is the
9 biggest, which is the cable that we're not being paid
10 for.

11 MR. ROEBUCK: This is Item 1 of your five-item
12 claim?

13 MR. JIM SIEG: Yes, Item 1 of my five-item claim.
14 Under -- it was plain to me that cable was in the pay
15 item sheet, and they used the cable pay item, I've been
16 told, to pay for copper strap.

17 At the time I'm bidding the project, I thought
18 the cable and copper strap were inclusive together, and
19 that you had to work them in together, the down
20 conductors. That's how the project was bid.

21 MR. ROEBUCK: Explain to us in general, you were
22 putting some copper cable down those piers in the
23 Skyway for lightning protection?

24 MR. JIM SIEG: There's four and a half inch by
25 one-eighth inch solid copper bar which we were calling

1 strap. Those are on the main aerials. All other
2 systems, there's also some half-inch copper cable in
3 this system, but not a lot. And then all other systems
4 utilized a half-inch copper cable for the ground
5 connections.

6 So, based on the information given, we interpret
7 it, and the pay item sheet even says cable, then in
8 parentheses copper strap.

9 If you go into the specification on the pay items
10 page, under pay items, all it says is cable. There's
11 absolutely no definitions. It's one of the new
12 submittals that I've submitted to you. Let me see what
13 page it is.

14 MR. ROEBUCK: These bid blanks?

15 MR. JIM SIEG: Yes, sir. This is out of the
16 specifications. It's not part of the plans, but part
17 of the contract, Section A632, cable. That's what we
18 have -- that encompasses that pay item, cable,
19 interconnect, furnish and install.

20 MR. ROEBUCK: So much per lineal foot.

21 MR. JIM SIEG: So much per lineal foot.

22 CHAIRMAN COWGER: Let the record show they're
23 looking at Exhibit 4, page 28.

24 MR. JIM SIEG: This is a page right out of the
25 scope of the contract. I didn't turn it in because it

1 wasn't something I was asking claim for, but if you
2 look at the aluminum handrail part of that, you
3 actually have a specification under the handrail.

4 If you look at the nonshrink grout part of the
5 contract, you actually have a specification, they want
6 compression strength and so forth. All we have here
7 for specification is just a pay item, cable,
8 interconnect, furnish and install, aerially.

9 That is one of the reasons why we assumed that
10 they had to be lumped together..

11 I just don't know how much to pull you guys in
12 and out of the plans. If I'm starting to go too much,
13 I'm pretty sure you will shut me down.

14 General Note A-10 refers to copper cable. Now we
15 are into the plans. If you will turn to the plans.

16 CHAIRMAN COWGER: Sheet R-2?

17 MR. JIM SIEG: Yes, sir. General Note A-10
18 refers to half-inch copper cable on the two main
19 towers. The cable on these areas were paid for on a
20 lineal foot basis. We have a pay item at the end of
21 this segment for a A632-8-11.

22 Then General Note A-10 is the only mention of
23 half-inch copper cable in these notes entirely.

24 General Note C-5, when we go to lightning
25 protector system and other systems, refers us to

1 Detail H, which is on Sheet R-7 for the method of
2 installation of facilities.

3 I think that's important that we understand that
4 this note is telling us this is the method for the
5 installation of the facilities, when we get over here
6 to this detail.

7 When we get there, we see that -- if we've gotten
8 there on R-7, we see a camera with some brackets and an
9 air terminal, shows you that you have a standard
10 cadweld connection, and then there's a note that says
11 half-inch copper cable connected to ground rod with
12 five-foot penetration in the bay bottom.

13 This is -- this one inch of cable that shows, or
14 this little bit of cable here is what the whole crux of
15 our claim is, whether or not we should be paid for that
16 cable.

17 It doesn't identify that cable. We don't have
18 any specification on that cable other than there's an
19 asterisk that says number 14, a WG half-inch standard
20 copper wire, 375 pounds per thousand feet. That's our
21 asterisk. That's what it says to do.

22 Now, if we install this cable per this detail,
23 that would be hanging 200 feet in some -- no, I'm
24 sorry, well, almost 200. It would be hanging almost
25 200 feet at the high point of the bridge, suspended

1 from that cadweld, which is hanging on two brackets,
2 which is attached to an air terminal. It's not
3 reasonable to assume that that's what is going to
4 happen.

5 We have no method of installation for that
6 half-inch cable other than in the general notes where
7 they talk about wire and strap, in the "A" general
8 notes, where they talk about wire and strap. No
9 place on the bridge will it be bent tighter than an
10 eight-inch radius.

11 Also they mention about the down-runs needing to
12 be attached every 10 feet or 20 feet, at 20-foot
13 intervals on the down-runs, on the horizontal runs --
14 I need to look this up to make sure that I'm correct.

15 MR. CHUCK SIEG: It was three feet.

16 MR. JIM SIEG: What I'm bringing you to is the
17 cable is not mentioned under lightning protection of
18 other facilities except in Detail H. The cable is
19 mentioned under general notes. That's the reason --
20 and the pay item falls under general notes.

21 When we get to the bottom of lightning protection
22 for other facilities, it says payment for this work
23 shall be included under pay Item Nos. A508-1, which
24 I believe is -- that's the brackets that's holding that
25 air terminal up there. They're getting up to break

1 that out and to pay us for the brackets that are
2 holding the air terminal.

3 Also, they're going to pay us for A620-1-1.
4 That's the electrode. That's the grounding electrode,
5 the ground rod that's driven into the bay bottom. They
6 broke that out. And they're going to pay us for
7 A750-71104, which I interpret to be the ground rod
8 and -- of the terminal.

9 CHAIRMAN COWGER: Excuse me, not the ground rod --

10 MR. JIM SIEG: Not the ground rod.

11 CHAIRMAN COWGER: -- but the air terminal.

12 MR. JIM SIEG: Being at that point, accessing
13 that point, doing the installation of that air
14 terminal, getting up on the bridge, which is not an
15 easy thing on this particular bridge.

16 At this point I would like to tell you, just as
17 I'm assuming you are going to be reading these minutes,
18 our bid price for the air terminals is \$2,000,
19 approximately. Our bid price for the air terminals was
20 \$2,233 each. There are 28 air terminals planned. That
21 gives a total price for that item of \$62,524.

22 Another thing that I find relevant is on Sheet
23 R-7, Table I. Remember there were 28 each, air
24 terminals, and 28 each on that pay item sheet.

25 If we look at the bottom of Table I, total number

1 of terminals to be installed, excluding the towers,
2 which they're handled under the aluminum railing --
3 that's how they paid for the terminals up there -- is
4 28. Therefore, every time you have a terminal, that's
5 what you are going to be paid for.

6 If we back up this list a little bit, you will
7 find out that every time you have a terminal, you don't
8 have a down line.

9 The signs, which are -- let me see, it's Element
10 No. 6, Table No. I, information sign. It shows there a
11 number of terminals, which is in the far right-hand
12 corner, being three. At that sign they paid us for
13 three terminals, \$6600, or almost \$7,000 to protect
14 that sign for the terminals.

15 Also, there is only one down drop, so they saved
16 money by putting it together with one down drop. They
17 didn't have to run as much cable. Actually they saved
18 a lot of money, because they never paid us for the
19 cable.

20 There would be no reason to break that out and
21 pay you for each air terminal. It's obvious to me --
22 it was obvious to me at the time -- and since then I've
23 been told that I was in error, but it was obvious to me
24 at the time that you have an air terminal, what they're
25 calling a system every time you have an air terminal.

1 I don't think that -- I could answer some
2 questions about it, but to me it seemed really plain
3 that they just omitted the half-inch copper cable.

4 MR. CHUCK SIEG: It was an oversight.

5 MR. JIM SIEG: It was an oversight. I believe if
6 they had recognized, if they had remembered they had to
7 have the half-inch copper cable, we would have had a
8 method of installation.

9 I know these guys over here don't -- you know,
10 they're not going to just let you hang half-inch cable,
11 175 feet in the air. They would have given us a method
12 of installation. I feel -- this is just supposition,
13 but I feel had they identified it, they would have also
14 given us a pay item for it.

15 I have a comp book that I've given you a copy of.
16 It's a copy of the comp book. I don't know if the DOT
17 brought the original or not.

18 CHAIRMAN COWGER: Exhibit 3.

19 MR. JIM SIEG: If we leaf through this comp
20 book -- let's start in the upper right-hand corner. We
21 see page number 1 of whatever, upper right-hand corner.
22 We go to page number 2, it says 2 of blank. We go to
23 page number 3, it says page 3 of blank.

24 If you will notice, the way all the writing on
25 all these pages is, it looks very similar.

1 Number 6 is blank, number 7 is blank. Then we go
2 to page number 8, this nice, crisp, brand-new looking.
3 This page 8 that is all brand-new looking and doesn't
4 look like it's originally part of the comp book is a
5 separate form, different altogether.

6 If you will look at the top where it says linear
7 measurement computations, it's obvious this form was
8 done at a later date. Well, I'll say it's obvious this
9 form is different.

10 This is the form that applies to 28 locations
11 listed in Table I, includes rods -- includes rods,
12 which means they're not going to pay me for the rods,
13 ground rods, half-inch cable, and miscellaneous
14 hardware. They gave me a pay item for miscellaneous
15 hardware and for the rods.

16 So, I think this was just a throw it up there and
17 see what happens. We're going to make sure it's a
18 system, everything is covered in it.

19 It doesn't say it's going to pay for the
20 installation, but it should have.

21 If you back up to see one of these others that
22 was written a little more clearly, I just hate to throw
23 this up because I really feel that the people sitting
24 across from me aren't devious, but it doesn't look
25 good, and I have to try to get my money because

1 I honestly don't think that they're devious, but I have
2 to try to present the strongest case that I can.

3 I just wanted to enter that in there, too.

4 This wasn't a real good job for us, and we need
5 to try to get paid for what we have done. That's all
6 we're really trying to do.

7 MR. CHUCK SIEG: If I may speak, Chuck Sieg.
8 Mr. Chairman, we have -- going back to Sheet R-7 where
9 we have identified the 28 locations, total number of
10 terminals to be installed, excluding the towers, for
11 28, and we have a note at the bottom, only the items
12 number 1 through 20 are to receive air terminals under
13 pay Item A750-711-104.

14 There's no mention in the specifications, the
15 plans, of a system. There's no definition of a system,
16 you know, until we get to the pay item sheet. It's
17 called the system.

18 When we bid this job and looked at this, we bid
19 terminals, as terminals are referred to, throughout the
20 plan. Only when we get to the pay item sheet where it
21 says -- where it has the word system, but no definition
22 of system.

23 If we had a definition of system, this plan
24 would have been much clearer. We're left to our own
25 judgment as to decide what is included and what is not

1 included.

2 At best I believe this note on Detail H is
3 vague. The same sentence that identifies copper cable
4 identifies the ground rod and five feet of penetration
5 into the bay bottom.

6 MR. JIM SIEG: It doesn't ever say that you will
7 furnish and install that cable, other than in the
8 general notes.

9 The General Note A does mention the half-inch
10 cable and does mention that it won't be tighter than an
11 eight-inch radius. And under general notes there we do
12 have a pay item which will address copper cable.

13 MR. CHUCK SIEG: It's our belief that the copper
14 cable was an oversight when the project was designed.
15 The copper cable in these 28 locations is just an
16 oversight. If we read through the notes, Note C,
17 they've identified most of the other stuff, but the
18 copper cable is just omitted.

19 There is no method for attachment. There is no
20 specification, other than this light note down here.

21 It seems to me the designer, for some reason,
22 just forgot that the copper cable was required in these
23 locations. And had it been required, there certainly
24 would have been a specification, a method of
25 attachment, and so forth.

1 And time allotted for the installation of said
2 cable, there was no time allotted in the original 45
3 days for installation of this cable.

4 And the DOT decided that yes, they would like to
5 have it installed. They would like to have it attached
6 to the structure, so they granted 30 days time for the
7 attachment of the cable. However, at that time we did
8 not request monies because we were under the assumption
9 that we were getting paid on a lineal foot basis.

10 MR. JIM SIEG: We had, in fact, been paid for it
11 at that time.

12 MR. ROEBUCK: You got the pay --

13 MR. JIM SIEG: We were paid for the half-inch
14 cable.

15 MR. CHUCK SIEG: For our first pay request, which
16 was prepared by Fred Johnson, George Brown, and
17 approved by Michael Irwin, based on 5,400 lineal feet
18 of half-inch copper cable --

19 MR. JIM SIEG: Get to the amount installed.

20 MR. CHUCK SIEG: The amount installed was 2,438
21 lineal feet of copper cable. We received payment for
22 that.

23 MR. JIM SIEG: We got to cash that check.

24 MR. CHUCK SIEG: DOT's representatives were on
25 site, saw the cable being installed by daily or weekly

1 measurements of the cable. It was obvious that they
2 interpreted the plan the same as we did. And that this
3 cable was to be paid for on a lineal foot basis. In
4 fact, they did pay for it.

5 Only when we asked for a supplemental agreement
6 to increase the plan quantities did someone upstairs
7 kick this thing back and say no, you've been paid for
8 it incorrectly, we're going to take that money back,
9 and you won't get paid for any of the half-inch cable.

10 CHAIRMAN COWGER: I think we have probably heard
11 about all we need from the contractor on that. We will
12 let the DOT rebut. You will have the opportunity to
13 come back.

14 MR. JIM SIEG: There is a person missing that we
15 asked to show up, who is Bob Gottschalk. Is he
16 unavailable today? I know he's located right here in
17 Tallahassee. It was a lot easier for him to get here
18 than any of you fellows.

19 MR. MOREFIELD: Not unless somebody asked him to
20 be here will he come.

21 CHAIRMAN COWGER: He is on the notice of
22 arbitration request.

23 Let me ask a few questions before DOT rebuts. As
24 I understand what was just testified to, on the first
25 estimate, there was 2,438 foot of half-inch copper

1 cable paid for. That was later totally removed from an
2 estimate, and that 2400 and some-odd feet was copper
3 cable that was used to connect these installations to
4 the ground rods, and did not involve the strap coming
5 down off the towers?

6 MR. JIM SIEG: That's correct.

7 MR. CHUCK SIEG: That's correct.

8 CHAIRMAN COWGER: Next question. You testified
9 about the fact that in the lightning protection of the
10 towers, now, there was mention of half-inch cable,
11 which I believe was up on the top somewhere that
12 connected ground rods into this copper strap.
13 Generally speaking that's what it amounts to.

14 Was that copper -- was that half-inch copper
15 cable that was used -- I realize it was a relatively
16 small amount -- was it paid for separately under the
17 item for cable, parens, copper strap?

18 MR. JIM SIEG: Yes, sir.

19 MR. CHUCK SIEG: Yes, sir.

20 CHAIRMAN COWGER: DOT, is that correct?

21 MR. ROBBINS: Yes, sir. The part for the tower.

22 CHAIRMAN COWGER: Question of DOT. Looking at
23 Exhibit No. 3 just a minute, on page 6, which is the
24 quantity booklet for the grounding electrode rods, they
25 show 25 grounding rods there.

1 Apparently that was in error in that there were
2 26 of these so-called installations that had to be
3 grounded -- 28, some of which -- yes, it was 28
4 installations that had to be grounded, plus there was
5 some other ground rods coming down from the towers in
6 the stay arrangements. So that quantity is slightly in
7 error?

8 MR. WOMBLE: In a few select locations you were
9 able to use one ground rod for more than one site.

10 MR. ROBBINS: There was a supplemental agreement
11 to revise that quantity to add another one for a
12 telephone.

13 MR. CHUCK SIEG: The telephone was omitted from
14 the original plans.

15 CHAIRMAN COWGER: DOT, let's go ahead and hear
16 your rebuttal on the thing.

17 MR. IRWIN: Do you want to do each --

18 CHAIRMAN COWGER: We want to do each part one at
19 a time. Maybe as we go down we can kind of combine,
20 but this one seems to stand by itself.

21 MR. IRWIN: I'm Mike Irwin, DOT. I will go ahead
22 and start off. For our position or our side it's real
23 important to note -- I will just go by the plans. On
24 Sheet R-2, under scope of work, the scope of this
25 project as it was designed was a three-part -- A, B, C,

7
1 lightning protection -- I'm reading from the plans --
2 lightning protection system to be installed on the
3 following bridge and related elements, main towers is
4 A, B is cable stays, C is other facilities, which
5 includes the lights. The other facilities are lights,
6 closed-circuit TVs, motorists warning signs, buildings,
7 towers.

8 The plans we feel like clearly distinguish
9 between three different types of elements in the
10 lightning protection system. And not to belabor the
11 notes on the page, but if you take -- if you just take
12 a gander down here through the A, B and C of the notes,
13 each one has a separate basis of payment.

14 I may as well get on over to what the discussion
15 is about is Item C. Item C is what we're talking about
16 here, lightning protection for other facilities.

17 The first thing they call attention to is -- of
18 course, Note No. 1, it takes you to Table I, Sheet R-7,
19 which is the one we have been looking at already this
20 morning. It shows the table and the method of
21 installation for the assembly.

22 So, the first note takes you to that sheet. It
23 basically tells you that that is the list of facilities
24 to be addressed, and the section on the table. Then it
25 goes on down, Note No. 5, see Detail H, Sheet R-7 for

1 method of installation for each facility.

2 And as you look at that detail, you know, the way
3 the plans were designed and the way we have done it,
4 this copper cable that we're talking about is included
5 in this detail as a -- installation to be installed, as
6 this -- per this assembly.

7 The notes basically separate the basis of payment
8 for this assembly and this detail as specifically in
9 Note No. 7 the basis of payment is separated out for
10 grounding rods, I believe brackets, and the lightning
11 protection system per each.

12 And those -- you know, we feel that it's clear
13 here that those three pay items is what the contractor
14 will be paid for for installing this system. And that
15 is, you know, basically the way it was designed.

16 It was not an oversight to leave the quantity off
17 for this copper cable. It was recognized in the design
18 and intended to be all along included in the pay item
19 for each.

20 That's basically what the notes say. That's the
21 way that it reads. It's our position that it is clear.
22 And it's even justified more so by the quantity. You
23 know, the quantity that we did pay for cable was, you
24 know, if you want to look at the comp sheets, was
25 basically correct. Or we wound up overrunning that

1 quantity at one point.

2 We feel the notes are clear, the plans are clear
3 that the -- that this cable is included under the per
4 each pay item for lightning protection systems.

5 The other issue, method of installation, you
6 know, and this is something that the designer felt --
7 and you can question them -- the method of installation
8 that was given in the detail was enough to complete the
9 project. We tell them where to connect it, where to
10 connect it -- and to connect it to the grounding rod
11 with five feet of penetration.

12 The other thing, the monthly estimate, to address
13 that, you know, we can specifically -- we have the
14 people here that participated in that.

15 Our position there is that there is no -- there
16 was no second interpretation on the part of the
17 Department. What happened is real simply the inspector
18 on the job was measuring everything that went into the
19 project. When he felt he made an error when he filled
20 out the work sheet, it wound up getting paid for.

21 Fred will tell us that he didn't -- you know, he
22 didn't research and get into the plans really deep
23 enough to know or to really have an interpretation. He
24 did what he measured up. He measured up on the site,
25 he paid for it. It wasn't until later that he even

1 read the plan notes and found that that's what --
2 that's the basis of the pay for this particular item.

3 You know, there's no other explanation other than
4 it was an error on the part of the inspector to pay it.
5 We don't feel that the error has compromised the DOT in
6 any way to pay for something that should not be paid
7 for. We don't feel that the error changed the contract
8 in any way from the standpoint of the way that the
9 plans were designed and the way that the items were
10 bid.

11 I guess that's really pretty much it from their
12 standpoint, just that it is from our view critical to
13 note that and to understand that the plans were
14 designed with three separate elements, each with its
15 own basis of pay. Is there anything else that -- Stan,
16 George, anything else that you want to add?

17 CHAIRMAN COWGER: Let's let the contractor come
18 back, and then I think maybe the Board might have a
19 question or two.

20 MR. JIM SIEG: Mr. Chairman, I would like to make
21 mention that he's using Detail H saying that this is
22 the point where we understand that we're going to have
23 to install this half-inch copper cable.

24 Now, if we take the chance -- take a moment to
25 look at this Detail H on Sheet R-7. We also see a

1 camera clearly spelled out. It says camera.

2 Well, if I'm to interpret this half-inch cable as
3 part of it, am I to interpret that this camera and this
4 galvanized pole are also part of it?

5 And also, I'd like to make mention that I find it
6 real hard to believe that a project manager doesn't
7 have, before he signs off on a pay request, hasn't read
8 one sheet, meaning the notes on the plans. I don't buy
9 that.

10 CHAIRMAN COWGER: I think we have heard enough on
11 that issue. I think we have heard both sides of what
12 happened there as far as that payment is concerned. Do
13 you have anything else?

14 MR. JIM SIEG: Not on that cable.

15 CHAIRMAN COWGER: We are going to leave that
16 issue very shortly. I have a couple of questions, if
17 I could.

18 DOT, just to make it clear the Detail H on Sheet
19 R-7 does not, in fact, show that cable being connected
20 to the structure in any way, does it?

21 MR. BROWN: No, it doesn't.

22 CHAIRMAN COWGER: How was it actually
23 constructed? It was fastened to a pier or something
24 coming down, wasn't it?

25 MR. BROWN: Right. That's correct.

1 CHAIRMAN COWGER: You didn't let it hang. Okay.
2 And as I understand DOT did recognize that there was
3 some deficiency there and granted the contractor 30
4 days additional time for the additional work of
5 fastening that cable, correct?

6 MR. BROWN: That's correct.

7 CHAIRMAN COWGER: Can someone tell me for future
8 use of the Board -- and you may not have this
9 information, but can someone tell me about what the
10 cost of this half-inch copper cable, per lineal foot
11 is? Not installed, now.

12 MR. JIM SIEG: Eighty-six cents.

13 MR. ROEBUCK: Eighty-six cents a foot?

14 MR. JIM SIEG: Yes, sir.

15 MR. ROEBUCK: So, it's relatively insignificant
16 in the price of trying to get it installed?

17 MR. JIM SIEG: Yes, sir. I think it's also
18 relevant that the price of the four and a half inch
19 strap per lineal foot is also relevant. That's
20 approximately just under \$3 a lineal foot for the four
21 and a half inch copper strap.

22 CHAIRMAN COWGER: How much?

23 MR. JIM SIEG: Just under three and a half
24 dollars per foot. It weighs 2.18 pounds per lineal
25 foot. We pay for it by the pound. Half-inch cable per

1 pound cost more than flat strap because it is, in fact,
2 a cable.

3 CHAIRMAN COWGER: Fine.

4 MR. WOMBLE: Mr. Chairman. The approximately
5 5400 lineal feet referencing the flat strap, this
6 material being, as the contractor has pointed out,
7 decidedly more expensive, we recognized there are times
8 when there are not sufficient pay items in existence,
9 and where you will use a pay item and try -- your
10 intention is to clarify in your notes that you're using
11 it for a purpose slightly different than it will show
12 up in the CES computer output.

13 This flat strap, 5400 feet, works out close to
14 the amount of flat strap installed, it being more
15 expensive and a specialized animal, if we may say,
16 compared to the more standardized half-inch cable.

17 And so it was our intention to keep some
18 distinction between the two in the two different areas,
19 hence you see Section A addressing the strap and
20 Section C addressing these specific locations where the
21 strap -- where the half-inch cable is to be used.

22 MR. JIM SIEG: Mr. Chairman, I don't believe the
23 quantity of the half-inch strap is quite as close as
24 you might have been led to believe. Actual amount of
25 half-inch strap installed was 6200 feet. Now that's

1 not the half-inch strap -- I'm sorry, it's four and a
2 half by one-eighth inch strap was 6,201 feet. That's
3 nearly 20 percent.

4 MR. WOMBLE: There is a --

5 CHAIRMAN COWGER: I think we understand that.
6 I don't think we need to know any more about that.

7 The question to the contractor, in your claim you
8 have requested payment for 3,273 feet of copper cable
9 at \$26 a foot, correct?

10 MR. JIM SIEG: Yes, sir.

11 CHAIRMAN COWGER: DOT, assuming for the moment
12 that he was entitled to separate payment for that item,
13 does that quantity seem reasonable?

14 MR. IRWIN: The quantity?

15 CHAIRMAN COWGER: Just the quantity. You've got
16 to assume that he's due payment. That's just an
17 assumption at this point.

18 MR. BROWN: Yes.

19 CHAIRMAN COWGER: Okay. Contractor, how do you
20 justify the \$26 a foot?

21 MR. JIM SIEG: The same way that I justify it for
22 the whole project was based at \$26 a foot. Had we not
23 been installing -- I will give you that the half-inch
24 copper cable does install slightly easier than the four
25 inch. It's easier to handle.

1 The price difference is negligible. Most of the
2 four and half inch is inside the structure. You're not
3 dangling off the structure trying to install it.

4 We had to average the cost to install half-inch
5 cable and four and a half inch wide copper strap. If
6 we were just doing copper -- if we had just given,
7 which could have been done, there were pay items
8 available -- they created one for lightning protection
9 systems.

10 They could have created one for the four and a
11 half-inch strap and given us a cable, and then you
12 would have seen a price differential in the strap and
13 the cable. But they had to be joined together, melded
14 together. So we would have had a copper strap slightly
15 higher and the copper cable would have been slightly
16 lower, but at the time of bid we only had one item.

17 CHAIRMAN COWGER: We understand that. You had to
18 average it in your cost.

19 MR. JIM SIEG: Yes, sir.

20 CHAIRMAN COWGER: It's your testimony that's the
21 way you bid the contract?

22 MR. JIM SIEG: Yes, sir.

23 CHAIRMAN COWGER: You looked at the cost of
24 installing the strap, the cost of installing the cable.
25 You came up with the total cost, divided it out by --

1 I don't know how you did that, now.

2 MR. JIM SIEG: We had to assume that the
3 quantities were going to run true at the time of the
4 bidding. At the time of the preconstruction meeting
5 I had done more -- further take-off and found that they
6 were going to be low. They weren't going to have
7 enough copper strap or enough pay item.

8 I brought that up at the preconstruction meeting.
9 At the time of the meeting I was told if we don't have
10 enough there will have to be a supplemental agreement.
11 That will only be handled at that time. We briefly
12 touched on it. Steve Womble said well, the half-inch
13 copper cable will be paid for under the lightning
14 protection systems, inclusive.

15 We had a little bit of a rift. The tape was lost
16 of that meeting, so what we have are some pretty
17 accurate notes from George Brown of that meeting. We
18 don't -- the tape is unavailable.

19 Fred Johnson was at that meeting and heard that
20 discussion, and I don't remember -- yes, George Brown
21 was doing that meeting. So they were privy to that
22 conversation prior to paying us for the half-inch
23 cable.

24 So, I just thought that might be relevant, also.

25 CHAIRMAN COWGER: DOT, do you have anything

1 further to say on this issue? Particularly in regard
2 to the statement about how the contractor arrived at
3 his unit price for the cable.

4 Mr. Morefield, Mr. Roebuck, do you have any
5 further questions?

6 MR. MOREFIELD: No.

7 CHAIRMAN COWGER: Okay. I think we have enough
8 on Item 1 then.

9 Let's go to Part No. 2. I think it stands alone,
10 too. So let's let the contractor -- and hopefully we
11 can move on now that we're out of that big item.

12 MR. JIM SIEG: Mr. Chairman, would you like for
13 me to start again?

14 CHAIRMAN COWGER: Yes.

15 MR. JIM SIEG: Okay. At a prefinal inspection it
16 was noticed that we had attached the copper cable
17 basically to the structure. At that time -- I wish
18 Mr. Gottschalk were here. I believe Mr. Gottschalk
19 said a more direct path would be desirable. I would
20 really like for anybody who was at that meeting to
21 correct me if I'm making a misstatement.

22 I believe Mr. Gottschalk stated a more direct
23 path would be desirable. I brought it up, well, it's
24 to code. And it was built to code. That's the
25 National Fire Protection Agency code, which is what we

1 have as a guideline for lightning protection systems.

2 MR. CHUCK SIEG: Unless otherwise specified.

3 MR. JIM SIEG: Unless otherwise specified. We
4 installed the project. Shortly after that meeting, we
5 received written directive to remove unnecessary loops
6 and bends.

7 There were no loops, but there were some bends
8 that could be removed if we did not attach the cable as
9 often as the code calls for. You don't have to follow
10 the structure as often, so you can remove some bends.
11 We did this. We pulled it away from the structure.
12 The structure is now not built to code, but is built as
13 we were directed to change it on these other
14 facilities.

15 I simply estimated, approximated the amount of
16 cable that we had to adjust, change, and unattach and
17 reattach. Granted we didn't have to reattach nearly as
18 much as we had attached the first time, but we
19 unattached and reattached approximately 1,040 lineal
20 feet of cable.

21 We had cadwelds to make, esothermic cadwelds. We
22 had to take the lightning terminal down in order to
23 make -- in order to readjust the height of it. That
24 means we had to work up on the cameras as well as down
25 all the way to the water.

1 I felt I was justified in being repaid for that
2 item again.

3 MR. ROEBUCK: At the bid price?

4 MR. JIM SIEG: Yes, sir, at the bid price. Now,
5 I can say yes, we will back out the price of the cable.
6 The price of the cable is so negligible, we are talking
7 about \$260, \$300 for that much cable. I just didn't
8 back it out.

9 CHAIRMAN COWGER: What you're saying is after you
10 got it all straightened out there was less cable
11 required to be left in place?

12 MR. JIM SIEG: Very little less cable left in
13 place, but what I'm saying is I did not have to install
14 new. I was able to reinstall.

15 MR. ROEBUCK: Reuse the cable.

16 MR. JIM SIEG: I reused it.

17 MR. ROEBUCK: But he had to go back in and
18 remobilize, rerig it.

19 MR. JIM SIEG: I did probably cut out two or
20 three feet at these locations. That two or three feet
21 has been deducted from this 1,040 feet.

22 CHAIRMAN COWGER: We're not interested in that.
23 Anything else to say before we go to DOT?

24 MR. JIM SIEG: No, sir, not about that.

25 CHAIRMAN COWGER: Let me understand what you did

1 to correct -- the problem is not that you had loops in
2 the cable -- this was your testimony, now -- but the
3 fact is that in some locations the cable was not going
4 as directly to ground as it could have been. And in
5 order to correct that, you had to do what, now?

6 MR. JIM SIEG: We had to deviate from code.

7 CHAIRMAN COWGER: I understand that. But what
8 physically did you have to do to the cable?

9 MR. JIM SIEG: We had to shorten it.

10 CHAIRMAN COWGER: I understand that.

11 MR. JIM SIEG: We had to take it off the
12 underside of the structure. We had to access it. Then
13 we had to reinstall it, refasten it, which is not -- we
14 had to work all the way from the water on many of them,
15 on all the trestle sections. We had to work from the
16 water up.

17 CHAIRMAN COWGER: I think we understand. What
18 you had to do, where it was running horizontally on the
19 underside of a segment, say, you had to disconnect it.
20 Therefore, it was kind of running the air for a ways.

21 In order to do this, you had to remove the air
22 terminals and, also, in some places you took off the
23 fasteners, in other places you had to loosen the
24 fasteners in order to stretch the cable. Is that
25 basically what it amounted to?

1 MR. JIM SIEG: Yes, sir. The air terminals we
2 had to loosen up, slide them down the poles in order to
3 get enough cable to where we didn't have to cut them
4 free from that end and make that weld, but we did have
5 to add a weld at the bottom end of the air terminals.
6 We had to get up in order to adjust them, but we didn't
7 have to remove the air terminals.

8 MR. ROEBUCK: The question seems not that DOT
9 disagrees to the fact that he did it, but just how much
10 they think it is worth.

11 CHAIRMAN COWGER: Now, DOT, let's hear what you
12 have to say about it.

13 MR. IRWIN: Okay. Mr. Chairman, basically we're
14 not in objection to the fairness of the claim, we a
15 couple of times have tried to get a backup
16 justification for the contractor's price and what we
17 felt like was a more fair price.

18 We realize that at the final inspection, when
19 they asked for -- they said it would be more preferred,
20 that was adding an extra work item to the contract.
21 And since that time we attempted to obtain either
22 backup for the \$26 per foot item or a more fair price
23 from the contractor, and he has refused to submit
24 anything to us.

25 Basically I have taken the liberty, or we have --

1 and you can understand why we feel this way. Under
2 Section 2, the second page, our records show basically
3 the amount of work that was done, because we had folks
4 there during this time. We used the contractor's
5 certified payrolls and labor burden. We have
6 calculated what we feel like the extra work is worth.

7 Based on the actual equipment that were at the
8 site, the people and what they made and everything that
9 was there. With allowing the markups that you see
10 there, which would be standard for DOT-type work in
11 trying to calculate extra work amount for supplemental
12 agreement, we felt like the work is, you know, worth
13 basically \$5600. That includes markup.

14 So, we are so far off their request, and it
15 didn't seem fair to us that they were asking just to be
16 paid blanket, a unit price, because the work was not --
17 the materials weren't furnished and the work was not as
18 inclusive as the original installment.

19 So that's why we asked for, a couple of times, a
20 revised price or a backup for the price he submitted,
21 and the contractor didn't submit it. That's why we
22 still -- this issue remains unsettled.

23 Steve, Fred, George, do you all want to reply to
24 anything about this method of installation, what it
25 took? Do you agree with what the contractor said?

1 MR. JOHNSON: Right, they did have to unattach
2 basically and then straighten it out a little. I don't
3 remember them doing too much work at the towers
4 themselves.

5 MR. JIM SIEG: At which towers?

6 MR. JOHNSON: At the terminals. You did most of
7 your work, when I was out there, was disconnect around
8 the cap that went over the column where it -- made
9 attachment to the cap, to the middle of the column
10 basically. The work went down like that.

11 MR. JIM SIEG: You saw that as well -- that's
12 one of the things I would like to mention. When we
13 reattached this, DOT didn't have personnel on site.

14 I believe that sometime during that phase
15 George Brown was told to stay off the bridge and don't
16 let his people out there. I don't know exactly when
17 that phase was. Am I in error there, George?

18 MR. BROWN: Fred was handling the inspections of
19 it. We let him handle that. Fred was out there doing
20 the reattachment procedure.

21 MR. JOHNSON: I was out there. I was out there
22 at some point.

23 MR. JIM SIEG: We absolutely did have to loosen
24 up the air terminals in order to retension them.

25 MR. IRWIN: Basically that's our response to that

12 1 is that we calculated based on actual damages for
 2 actual work.

 3 CHAIRMAN COWGER: I think we can move on with a
 4 couple of questions real quick. DOT, where did these
 5 labor rates that you have come from?

 6 MR. IRWIN: Contractor's certified payrolls.

 7 MR. ROBBINS: That's not correct. I spoke with
 8 Jim Sieg on the 25th to confirm some salaries.

 9 MR. JIM SIEG: Those numbers are not in dispute,
10 the four days duration is in dispute.

11 CHAIRMAN COWGER: The hours are in dispute. How
12 did you arrive at the hours?

13 MR. BROWN: According to the daily reports. We
14 researched the dailies when he did the rerouting work.
15 We tallied the hours up and it came to be four days and
16 a total of 33 and a half hours.

17 CHAIRMAN COWGER: Contractor, how did you come up
18 with the \$26?

19 MR. JIM SIEG: That was from the bid price.

20 CHAIRMAN COWGER: For what?

21 MR. JIM SIEG: The installation of the half-inch
22 copper, furnishing and installing it.

23 MR. MOREFIELD: If it wasn't four days, 33 and a
24 half hours, what was it in your opinion?

25 MR. JIM SIEG: I thought I was out there like

1 more like two weeks. Now this is hindsight. I will
2 testify to that. But I don't have the actual --
3 I can't document exactly how long it was.

4 CHAIRMAN COWGER: So, this leaves the Board in
5 kind of a guessing mode, you know. DOT says their
6 records show --

7 MR. IRWIN: We have it documented.

8 CHAIRMAN COWGER: The DOT says we have records
9 that show the hours and the contractor says it's more
10 but we don't know how much it was.

11 MR. ROBBINS: If you ignore our records, you
12 ignore the project diary.

13 MR. ROEBUCK: Yes, but Fred wasn't there all the
14 time. You were in and out.

15 MR. JOHNSON: I tried to get out there once a
16 day.

17 CHAIRMAN COWGER: Does the DOT project records
18 cover this interval of time when the corrective work
19 was going on?

20 MR. BROWN: Yes, it does.

21 CHAIRMAN COWGER: Apparently it does.

22 MR. ROBBINS: My quantities came from Jim Sieg
23 himself.

24 MR. MOREFIELD: Does your daily diaries include
25 time on either side of this four-day window showing

1 before and after, when they were doing something else
2 or no work?

3 MR. JOHNSON: Shows from the time they did their
4 final inspection, I guess. I was not there, to the
5 time where he rerouted the locations.

6 MR. BROWN: Under the remarks, they do show when
7 he was directed to reroute the cable, and then the
8 subsequent daily diaries show when he actually started
9 doing it and when he ended the work. We came up with
10 four days and 33 and a half hours for that work.
11 Personnel and equipment is all documented on the daily
12 reports.

13 MR. MOREFIELD: Is that continuous days or when
14 you added it up over two weeks?

15 MR. BROWN: That's continuous days.

16 MR. JIM SIEG: We did miss our boat in there, but
17 this is so far off, I mean it's almost ludicrous.

18 CHAIRMAN COWGER: Does anybody have any further
19 questions, Board members? Let's go on to Item 3.

20 MR. ROEBUCK: That's the inoperable elevators.

21 MR. JIM SIEG: I'm just going to read it.

22 Summary of claim, "FDOT agreed to grant 30 additional
23 contract days due to the inoperative elevator in the
24 north tower and the inconsistent service of the
25 elevator in the south tower. This delay caused Sieg to

1 incur additional job site overhead and unallocated
2 office overhead, which was not compensated, and to have
3 liquidated damages assessed against it. Sieg requested
4 compensation in the amount of \$13,430.60 in overhead,
5 plus \$13,340 in liquidated damages for a total of
6 \$26,770.60."

7 We did, in fact, document and provide the DOT
8 with numbers which are relevant to this. We used the
9 Eichleay formula, which is what was given to us by an
10 attorney that we have asked how do we do this. He
11 submitted to our CPA the Eichleay formula so that we
12 could figure it out, document the numbers. The CPA
13 came up with what I thought was a very conservative
14 overhead number. We turned that in.

15 They came back with a letter that said we don't
16 recognize the Eichleay formula. It can't be done.
17 I really don't have any more to say about this item.

18 CHAIRMAN COWGER: DOT?

19 MR. IRWIN: Sir, their 30 days, of course, we are
20 not objecting to that. We attempted to make an offer,
21 to give the contractor the 30 days. The 13,000 that
22 he's claiming with liquidated damages would go right
23 along with that. The overhead, position there being
24 that home office overhead, or field office overhead, we
25 don't have an objection to. We verified the 4500 that

1 the contractor asks for.

2 I'm sure you're very aware that as far as
3 Eichleay, our position on Eichleay is that the Eichleay
4 formula by itself assumes damages, and the use of
5 Eichleay has not been accepted by the DOT without proof
6 that the damages have occurred. And we asked the
7 contractor to submit to us some backup showing us that
8 he did, in fact, have damages which he to date has not
9 done.

10 So, at this point, you know, we are -- that's why
11 our estimate of the merit of this part of the claim is
12 30 days plus the LBs for the 30 days, \$4500 for the
13 field office and possibly some home office overhead,
14 provided that, you know, there is actual damages which
15 occurred.

16 CHAIRMAN COWGER: Okay. Anything else from DOT?
17 I will let the contractor testify in just a minute.

18 As I understand it, DOT, you have no objection
19 then to releasing all the liquidated damages because
20 you're saying that liquidated damages were assessed for
21 29 days, and he was, in fact, delayed 30 days on the
22 elevator delay, so that wipes out the liquidated
23 damages?

24 MR. IRWIN: That is correct.

25 CHAIRMAN COWGER: The only thing we're here to

1 talk about is the overhead costs.

2 MR. IRWIN: And Eichleay.

3 CHAIRMAN COWGER: And Eichleay. Now, how did you
4 arrive at the 4513 for the job site overhead?

5 MR. IRWIN: That was based on the contractor's
6 submittal.

7 CHAIRMAN COWGER: Was that in the contractor's
8 submittal? Okay. As long as I know where it came
9 from. The question has been answered.

10 And then you are also saying that maybe some home
11 office overhead is due but it hasn't been documented as
12 to how much, because you don't accept the Eichleay
13 formula. Okay. Excuse me, Mike, is that right?

14 MR. IRWIN: Yes, basically that's correct. We
15 don't know if the home office overhead damages are --
16 were incurred, so we don't have any backup right now or
17 any justification that this is a legitimate request.

18 CHAIRMAN COWGER: Contractor, briefly come back
19 and tell us what you have to say about that.

20 MR. JIM SIEG: We have given him the Eichleay
21 formula, and it shows our home office expenses, shows
22 the formula. They came back to us, said we don't
23 recognize the Eichleay formula. Probably has to do
24 with the Capaletti thing down there, that they don't
25 want to hear about Eichleay anymore. I feel we did

1 give them sufficient documentation that documents our
2 claim on this item.

3 MR. CHUCK SIEG: We are a fairly small contractor,
4 and this project was the major thrust of our revenue
5 during this time period. Delays caused by this project
6 did, in fact, impact our office considerably.

7 MR. JIM SIEG: There may not be a good answer for
8 this, but in 29 days we have liquidated damages of
9 \$13,430.60. I'm assuming that that's to cover for the
10 additional time that it takes the DOT to administer
11 this contract, is it not? Liquidated damages, what are
12 they for?

13 MR. IRWIN: In theory?

14 MR. JIM SIEG: Yes.

15 MR. IRWIN: Liquidated damages are calculated off
16 of either road use cost or a type of cost that would be
17 associated with the work on the system, seeing that the
18 contract is finished on time.

19 MR. JIM SIEG: So the additional costs then that
20 it costs you to administer the contract was \$13,430.
21 It's reasonable that it would take me as much money to
22 administer the contract for an additional 30 days,
23 I feel.

24 I know that that's not an acceptable way to do
25 it, but we're not talking about a huge number here. It

1 just seems reasonable to me that if it costs you that
2 much, it costs me that much.

3 MR. IRWIN: That's not really a correct statement
4 that that is --

5 MR. JIM SIEG: It's definitely not a penalty --

6 CHAIRMAN COWGER: I think we will cut this off.
7 Unless the Board has some questions, we will go to
8 Item 4. We understand what you're saying.

9 On Section 4, to speed things up a little bit,
10 I think everybody understands what the claim is about.
11 If we will go to Exhibit 5 and look at Tab 4, where the
12 contractor's claim is stated, question, how was the
13 \$77.88 arrived at?

14 MR. JIM SIEG: Is that question to me?

15 CHAIRMAN COWGER: Yes.

16 MR. JIM SIEG: This is a lump sum maintenance of
17 traffic based on 45 days.

18 CHAIRMAN COWGER: You just divided 45 into the
19 contract price, lump sum?

20 MR. JIM SIEG: Yes, sir. When we came out with
21 an actual cost, it's actually \$80 per day is what it
22 cost us.

23 MR. ROEBUCK: Do we have that?

24 MR. CHUCK SIEG: No, sir, you don't have that.

25 MR. JIM SIEG: It actually costs us \$88.70. Dead

1 cost is \$50.20. The reasonable amount of markup is
2 \$88.07 per day for the traffic control.

3 CHAIRMAN COWGER: DOT admits some liability here.
4 The argument is over how much.

5 MR. IRWIN: Again, basically the same thing
6 happened here. We admit liability. We were looking to
7 determine what a fair price was for damages. If you
8 take the lump sum, split it up, we didn't feel that was
9 fair. We knew what was out there.

10 On the next page following the one you read from,
11 it shows our calculation of -- and again this is based
12 on a statewide average because we didn't have the
13 contractor's price. But based on the statewide
14 average, the amount of impacts caused by the delay to
15 the maintenance of traffic should have been around
16 2,000 instead of 4500.

17 We would have liked to not have had to even waste
18 your time today with this issue and a couple of these
19 other issues, but we were unable to get the contractor
20 to submit a backup justification order to justify his
21 price. So that's why that's in here.

22 CHAIRMAN COWGER: Contractor, do you have
23 anything further to say about this issue?

24 MR. JIM SIEG: No, sir.

25 MR. CHUCK SIEG: Except they don't have any

1 barricades or cones which is what we were using on
2 here.

3 MR. JIM SIEG: They also can rent arrow boards
4 cheaper than we can.

5 MR. CHUCK SIEG: All the items are lower than
6 what we actually had to pay.

7 MR. JIM SIEG: They're probably going on what
8 they pay when they have their own contractor out there
9 dealing directly. We don't get quite that good a deal.

10 MR. IRWIN: Just to follow up on that, those
11 prices are based on statewide averages as bid by all
12 contractors in the state.

13 MR. ROEBUCK: Do you have anything else on that?

14 CHAIRMAN COWGER: Okay, let's go to five.

15 MR. ROEBUCK: Last item.

16 MR. JIM SIEG: The contract indicates the old
17 cable in elevator areas was to be removed. At the
18 prefinal inspection, Bob Gottschalk and I went up on
19 the towers and we were looking out over the bay, kind
20 of enjoying the wind. When we were on our way down, he
21 noticed that we had left in the ladder areas of the
22 towers an old half-inch copper cable.

23 Now, the contention here is that the towers, if
24 we had -- I feel if the designer had wanted to remove
25 the old cable, the old lightning protection system

1 inside the towers, it would have been simply stated as
2 that. However, he did take the time to define elevator
3 areas of towers.

4 Granted they're very close, but the work had
5 already been done on -- in the elevator areas. We did
6 have to go right by it. It would not have been major
7 had it not been done at the prefinal inspection and we
8 had to go back into each tower to remove those cables.
9 \$1250 to go up there and remove the cables is not a
10 high number, for each cable.

11 CHAIRMAN COWGER: Let me ask you a question
12 before DOT rebuts. Let's look at, on the plans.
13 I think Sheet R-11 is a detail of the pylon.

14 As I understand it, the elevator in this case
15 runs from the deck level up to the top of the pylon, or
16 the tower, as somebody called it. Right?

17 MR. JIM SIEG: We don't have that sheet.

18 CHAIRMAN COWGER: I'm sorry, you don't have
19 Sheet R-11. Well, let me ask you this. The elevator
20 runs up the inside of that pylon, right? Where is the,
21 what do you call it, ladder area -- where is the ladder
22 area in relation to the elevator?

23 MR. WOMBLE: Parallel. There's a quasi wall --
24 I don't know really how to describe what separates
25 them. They both fill the interior of the tower, with

1 the separation of a wall that has passageways at
2 intervals back and forth between the ladder area and
3 the elevator shaft. Is that agreed upon?

4 MR. JIM SIEG: That's agreed.

5 CHAIRMAN COWGER: So, it's both items are inside
6 the pylon, elevators on one side, ladders on the other.
7 They're separated by a wall, except that there's
8 interconnects at certain places, I assume, where your
9 cable stays are? Anyway, okay, DOT, you didn't get a
10 chance to rebut any further. Was there anything else?
11 We are getting ready to close.

12 MR. IRWIN: Just that our summation really says
13 it there, that the elevator area includes the complete
14 area that the elevators -- the elevators are in, both
15 areas, the elevators and the access. That's pretty
16 much it. It's summed up there.

17 MR. ROEBUCK: Fred, in your daily inspections are
18 you familiar if any of that cable was still left in
19 that pylon? Are you familiar, is it still in there?

20 MR. JOHNSON: After, no. After they did their
21 semifinal, final inspection, they found it.

22 CHAIRMAN COWGER: As I understand the thing, the
23 issue of removing this additional cable in the ladder
24 area did not come up until what I would call the
25 semifinal inspection?

1 MR. JIM SIEG: Yes, sir.

2 CHAIRMAN COWGER: DOT, do you agree to that?

3 MR. JOHNSON: Yes.

4 CHAIRMAN COWGER: Okay. Mr. Morefield,

5 Mr. Roebuck, further questions?

6 MR. MOREFIELD: Nothing.

7 CHAIRMAN COWGER: Okay. This hearing is hereby
8 closed. The Board will meet on August 31 (sic) to
9 deliberate on this claim, and we will have our final
10 order shortly thereafter. Thank you, gentlemen.
11 (Whereupon, the hearing was concluded at 11:15 a.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


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 52 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 17th day of June,
A.D., 1993, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,
STATE OF FLORIDA.



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

My Commission Expires June 27, 1994