

DISPUTES REVIEW BOARD RECOMMENDATION

April 24, 2009

Suzanne Quinn
Quinn Construction Inc.
1321 77th Street East
Palmetto, FL 34221

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RE: FPIDs408185-2-52-01, Contract No. T1242; Anna Maria Bridge #130054-SR 64

Dear Sirs:

The Florida Department of Transportation (Department) and Quinn Construction, Inc. (Quinn) requested a hearing concerning the issues of:

1. Is Quinn entitled to additional contract time and/or additional monetary compensation for the additional time it incurred to complete the work and/or for the additional costs it incurred as a result of the Department's directive requiring the Hopkins Frames to be manufactured by an AISC certified shop rather than allowing Quinn to manufacture the Hopkins Frames in its own shop facility?
2. Is Quinn entitled to additional contract time and/or additional monetary compensation for the additional time and costs it incurred to complete the structural steel work and/or for the additional costs it incurred to mitigate any delay in delivery of the structural steel (by changing the sequence of work and incurring additional costs in setting up for unexpected phases prior to the bridge closure period) which was a result of the Department's approval of an AISC simple bridge certified shop for all structural steel items, for its failure to timely have a pre-fabrication meeting, and then rejecting the approved shop for certain steel parts requiring additional service costs to Quinn in hiring outside engineers, extra submittals, testing, extra cost in setting up extra phases and delaying in delivery of the steel?

Summaries of the Departments and Contractors positions and rebuttals were forwarded to the Disputes Review Board (DRB), and a hearing was held on April 10, 2009.

ISSUE #1: Is Quinn entitled to additional contract time and/or additional compensation for the requirement by the Department to have the Hopkins Frames manufactured by an American Institute of Steel Construction (AISC) certified shop rather than allowing Quinn to manufacture it in their own facility?

Contractor's Position – Issue #1

The work for the project includes Structural, Architectural, Mechanical, and Electrical rehabilitation. The mechanical work consists of:

1. The reconstruction of the bascule drive racks, frames, open gearing shafts, bearings, and speed reducers;

2. The replacement of the bascule motor couplings, Hopkins Frame, live load shoes and span lock system;
3. The reconditioning of the bascule trunnions.

Quinn based its means and methods and contract price on fabricating the two replacement Hopkins Frames (one for each bascule leaf) in its own machine shop facility in Palmetto, Florida. Quinn's machine shop facility has been in operation over 35 years, and has the equipment, skilled labor, the supervision and experience to manufacture the Hopkins Frames. Quinn states they have manufactured Hopkins Frames in its machine shop for other Department projects including the Longboat Key Bridge.

As early as January 2008, Quinn notified the Department that they intended to manufacture the Hopkins Frames at their own machine Shop. On March 27, 2008, the Department wrote Quinn stating that in order to manufacture the Hopkins Frame, their shop had to be an approved Department fabricator listed on the Department's list of Qualified Steel and Miscellaneous Fabrication Facilities. The Department made reference to Contract Specification Section 460, Structural Steel and Miscellaneous Metals as the basis for its directive. Quinn's Shop was not ASCI certified or listed by the Department as a qualified steel and miscellaneous fabrication facility.

Quinn contends the Department's directive was not in accordance with the requirements of the Contract documents regarding the manufacturing of the Hopkins Frames. The contract documents do not require Hopkins Frames to be manufactured by an AISC certified shop included on the Department's list. They state that Quinn's shop conforms to the requirements of the contract documents related to the manufacturing of the Hopkins Frames.

Since Quinn's facility is not an AISC certified shop included on the Department's list, Quinn was forced to purchase the Hopkins Frames from an outside vendor. The Department's directive resulted in Quinn incurring additional costs and additional time to perform the work.

Quinn contends the contract documents also indicate that a Hopkins Frame is an element of the bascule leaves drive machinery and the manufacture, installation and payment of the Hopkins Frames fall under the contract specification for Movable Bridges, Section 465. The Hopkins Frames are not structural items and do not fall under the provisions of Contract Specification 460, Structural Steel and Miscellaneous Metals.

The basis of their claim is that on Contract Drawing 'Sheet B-05, the scope of work for the project is separated into 3 categories:

1. Structural and Architectural
2. Mechanical
3. Electrical

On contract drawing sheet B-05, the Hopkins Frame is listed under the mechanical heading along with other bascule machinery elements, including gears, shafts, bearing, speed reducers, motor couplings, live load shoes, span locks and trunnions. The Hopkins Frame is not listed under the Structural heading which includes other bascule items such as steel open grid lock, steel

sidewalk grating, aluminum sidewalk planking, and left steel elements. They further contend that Contract Specification Section 465-6 lists the Hopkins Frame as an item of the movable bridge machinery.

Department's Position – Issue #1

The Hopkins Frame dispute refers to the denial by the Department to allow Quinn permission to fabricate these components using their own facilities. It is the Contractor's position that the Hopkins Frame fabrication does not fall within the requirements of Section 460 which require fabrication in an AISC approved facility. This issue was raised and responded to in writing on November 15, 2007 stating that Quinn was not qualified to perform this work by the contract documents. This directive was again reinforced with seven (7) more notifications dated from November 15, 2007 through March 27, 2008. The last of which resulted in the Notice of Intent to Claim on May 5, 2008. It is the Department's position that Quinn is not entitled to any additional compensation or contract time for this issue.

Although Quinn claims they have performed this type of work for the Department on previous projects even though they were not AISC certified, the similar work performed on past projects was under the old specification requirements. Under the Technical Special Provisions for this project, the Structural Steel and Miscellaneous Metals fabricators must meet the requirements of Project Supplemental Specifications, Section 460 "Structural Steel and Miscellaneous Metals." Quinn's interpretation is that the Hopkins Frame is not defined in Section 460-1.1, paragraph 10 Miscellaneous Components, however, the Department contends that in this section it clearly states, "*this designation refers to, but is not limited to, the following:*" Moreover, in the Project Specifications, Section 6-8.4 Quality Control Programs Approval: it defines the following, "*Steel and Miscellaneous Bridge Metal products are steel bridge components, movable bridge components...*" As the Hopkins Frame is a primary component of a movable bridge, it is defined by specification to be categorized as a Steel and Miscellaneous Metal.

In the Project Supplemental Specifications, Section 460-2, Materials paragraph 4, it states the following:

"Ensure that structural steel and miscellaneous metal components and products for use on Department projects are obtained from a fabricator listed on the Department's "List of Qualified Steel and Miscellaneous Fabrication Facilities" and certified by the AISC Certification Program."

Since Quinn is not on the Department's "List of Qualified Steel and Miscellaneous Metals Fabrication Facilities" and is not an AISC certified fabricator, they are not qualified to perform the shop fabrication for this project.

Based on the "As Bid Contract Documents" the Department contends it was Quinn's responsibility to have been aware of the requirements to either get certified as an approved FDOT fabricator or made provisions to have an FDOT qualified fabricator manufacture these items. The Department's position is that waiving the requirements for an AISC certified

fabricator from its list of approved fabricators would jeopardize the quality that they require for the rehabilitation of the Anna Maria Bascule Bridge.

In addition, the Department states that Quinn was advised as early as November 2007 that they did not qualify as an approved FDOT fabricator. However, it took them until May 5, 2008 to agree to hire an approved fabricator. They, in turn, notified the Department that this may jeopardize the fabrication of the Hopkins Frames and to be ready for their installation by the revised bridge closure date of September 29, 2008.

The Department's position is that the contract documents clearly defined the Hopkins Frames as components of the movable bridge; categorized them as part of Structural Steel and Miscellaneous Metals; related the Hopkins Frames to the fabrication criteria in Section 460; addressed the fabrication qualification of the facility; identified the Quality Control requirements, therefore Quinn is not entitled to any added contract time or monies.

Contractor's Rebuttal Statement on Issue # 1

Quinn contends the Department incorrectly tried to divert the specification provisions related to the Hopkins Frames from the Project Supplemental Specifications, Section 465, Movable Bridges, where the provisions for the Hopkins Frames are located, to the specifications for Structural Steel and Miscellaneous Metals, Section 460, which are not related to the Hopkins Frames.

They further state:

- The Hopkins Frames are movable bridge machinery elements included in the provisions of Contract Specifications 465, Movable Bridges
- The Hopkins Frames are not included in the provisions of Contract Specification Section 460, Structural Steel and Miscellaneous Metals
- The Hopkins Frames are not structural steel or miscellaneous metals to be manufactured under the provisions of Contract Specification Section 460, Structural Steel and Miscellaneous Metals
- The Hopkins Frames are not paid for as movable bridge machinery under Contract Specifications, Section 465, Movable Bridges
- Contract Specification, Section 465, Movable Bridges and Structural Steel and Miscellaneous Metals, does not require the Hopkins Frame to be manufactured under the provisions of Contract Specification 460, Structural Steel and Miscellaneous Metals
- The word "coordinate" as used in Specification Section 465-1 Related Work does not mean "to be manufactured".
- Quinn's price to the Department to construct the project was based on Quinn manufacturing the Hopkins Frames in its own machine shop facility.
- Quinn contends they are entitled to additional Contract Time and/or additional monetary compensation for additional costs and time incurred as a result of the Department's directive that the Hopkins Frames be manufactured by an AISC certified shop.

Department's Rebuttal Statement on Issue #1 :

The Department contends they have never disagreed or questioned Quinn's ability and/or experience to fabricate the Hopkins Frames in their facility. It is agreed that they have, in the past, performed this type of work on several FDOT projects. The problem is that they have not taken the steps to be "certified" and placed on the Department's list.

Quinn states that their cost submitted at bid was based on fabricating the Hopkins Frames in-house. This does not meet the requirements of the contract documents. Quinn is responsible for being fully aware of the contract documents prior to submission of the bid. It is the contractor's responsibility to examine the proposed work site, to investigate the conditions to be encountered and be aware of the character, quality and quantities of work to be performed and materials to be furnished as to the requirements of all contract documents.

The Department directed Quinn to have the Hopkins Frames fabricated by an FDOT approved AISC facility. Quinn had the option of becoming an approved facility, thus fabricate these elements for the project. This would have met the stated bid goals.

There also appears to be a difference of the meaning "coordinate" which seems to hinge Quinn's position. The definition provided by Quinn is certainly correct, however, the usage in the context is misapplied. The meaning of the term reflects that Specification 460 and 465, respectively, are "to work or act together effectively" – The Oxford Encyclopedic English Dictionary definition of "Coordinate".

FDOT further contends that Quinn was not and is not entitled to additional contract time or compensation because they are not and were not qualified to fabricate the Hopkins Frame per the contract documents.

DRB Findings on Issue #1

The Board finds that Quinn had performed the fabrication of these Hopkins Frames on other bascule projects such as Long Boat Key Bridge, and has successfully been fabricating steel structures on similar bascule bridge rehabilitation projects for the Department for more than 30 years. Quinn said it would take them 2 to 3 months to get certified. However, the new specification precludes them from continuing to perform this work without being AISC certified. Although steps were taken by the Engineer of Record to allow Quinn to perform this fabrication on the Hopkins Frame, as he had in the past, the new specifications require AISC certification as a quality control measure.

FDOT considers there to be a value in requiring a fabricator to be certified in that certification by AISC brings with it a certain assurance that the fabricator has processes, procedures, personnel, equipment, experience and a facility in place to produce a quality project. FDOT considers this upfront evaluation as the key first step in assurance of a quality project and fractural critical work.

The Hopkins Frame is constructed with many components: link arm, bearings, coupling, drive, motor, brakes, paint machinery, rack frame, etc. Several pay items are used to pay for the various components: electrical, painting, Hopkins Frame. Therefore it is necessary to get specification information from several sections of the book.

Specifications must be looked at as a whole for the project. Therefore, one cannot look at Section 460 and state that it only refers to the items listed in it. Actually, numbers 5 and 10 in Section 460-1, Structural Steel and Miscellaneous Metals in the Supplemental Specifications relate to this description:

5. Bracing members subjected to and specifically designed for traffic live load and/or other loads.

10. Other members as may be identified in the Contract Documents.

Further, Section 5-2 of the FDOT Standard Specifications entitled Coordination of Contract Documents states in part:

“These Specifications, the plans, Special Provisions, and all supplementary documents are integral parts of the Contract; a requirement occurring in one is as binding as though occurring in all. All parts of the Contract are complementary and describe and provide for a complete work.”

An example of having to use more than one section of the Specification Book when an item has related work such as Structural Steel, Painting, Electrical, Machinery, etc., was when in response to a question asked at a pre-bid conference and the answer was included in the contract. Traffic signals and supports were not paid for under structural steel; but it was tested and inspected using a Structural Steel Fabrication Report.

Specification 6-8.4 states that Steel and Miscellaneous Metal Products are Steel Bridge Components, Movable bridge components, etc. Section 460-2 is the Structural Steel section and states that work must be performed at a certified AISC facility.

Page 65, Supplemental Specifications, Section 460-2

Ensure that structural steel and miscellaneous metal components and products for use on Department projects are obtained from a fabricator listed on the Department’s “List of Qualified Steel and Miscellaneous Fabrication Facilities” and certified by the AISC Quality Certification Program with the AISC categories modified as follows:

Supplemental Specifications, Section 465 – Movable Bridges,
465-6.5.2 *Related Work*

Coordinate work with general machinery requirements and specific work described in this technical special provision including Speed Reducer and Gear Train, Welding, Bolting and

machinery alignment requirements. Coordinate work with related work in Section 460 of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction 2007 as amended.

The definition of coordinate (Webster's Dictionary)

“equal in importance or degree”

“equal in importance”

“work together”

“to place in the same class”

Therefore, related work in this case, Structural Steel Welding and Fabrication, Section 460 & 465, are of equal importance and must be worked together to complete work. To do otherwise would say that movable bridges and fixed bridges are not equal and fixed steel bridges are more important than movable bridges and therefore needs to meet a higher standard.

The Hopkins Frame is bid under Section 465 because it has many different type of components such as motor, structural steel, shafts, painting, gears, brakes, etc. Section 460 Structural Steel, can be bid similarly on all projects, usually by the pound or lump sum.

DRB Recommendation on Issue #1

The Board finds there is **no entitlement** to additional monetary compensation or additional contract days to the contractor.

ISSUE #2 –Is the Contractor entitled to additional monetary compensation for the additional costs incurred to furnish, install maintain and remove temporary sidewalk and handrail items as a result of the Department's stoppage of the fabrication of steel walkway and handrail components of the bascule leafs by Outback Metal Fabrication, Inc.?

Contractor's Position – Issue #2 -

Quinn based its means and methods and its price to perform the work upon utilizing Outback Metal Fabrication, Inc. (Outback) as the fabricator of the steel walkway and handrail components of the bascule spans. The Department approved Quinn's Quality “Control Plan which listed Outback as the fabricator of the structural steel items.

In December 2007, prior to starting fabrication, Outback contacted the Department regarding Outback's certification to fabrication of the steel walkway and handrail components of the bascule spans and was told by the Department that Outback's AISC Simple Bridge Certification was sufficient for the fabrication of the steel items and that Outback was authorized. Outback began purchasing material in mid December 2007 and began fabrication of the steel walkway and handrail components after Quinn received the Department's approval of the shop drawings on February 19, 2008. Although the Department initially informed Outback that its AISC

certification was sufficient for fabrication of the steel walkway and handrail components of the bascule spans, the Department subsequently reversed its position and on April 15, 2008, directed that all structural steel fabrication by Outback cease because AISC Simple Bridge Certification was not sufficient to fabricate the steel items. At that time, slightly less than one-half of the steel walkway brackets had been fabricated. Outback responded that although the sidewalk brackets being fabricated were part of the main member of the bridge, they were non-fracture critical and as such, AISC Simple Bridge Certification was sufficient.

Except for the Department's 2.5 month stoppage of the fabrication of the new steel sidewalk and handrail items, Quinn would have received those steel items from Outback in sufficient time to allow the removal of the existing steel sidewalk and handrail items and the installation of the new steel sidewalk and handrail items without having to perform additional work installing and removing temporary sidewalk and handrail items.

Quinn feels they are entitled to additional monetary compensation for the additional costs it incurred to furnish, install, maintain, and remove temporary sidewalk and handrail items as a result of the Department's stoppage of the fabrication of the steel walkway and handrail components of the bascule leaves by Outback.

The period of closure of the bridge for rehabilitation of the bascule span was limited to 45 calendar days and was stipulated to commence on September 24, 2008. Due to the quantity of work to be performed on the span during the closure, Quinn had planned to replace the steel walkway and handrail components on both the eastbound and westbound roadway sides of the bascule span prior to the bridge closure period. Quinn's planned duration for removal of the existing steel walkways and handrails was 65 calendar days. In order for Quinn to replace the steel walkway and handrail components on both the eastbound and westbound roadway sides of the bascule span prior to the bridge closure period, the steel walkway and handrail material would have to arrive at the project site no later than July 25, 2008 to allow 65 calendar days of installation prior to September 29, 2008.

The contract documents required Quinn to maintain pedestrian traffic on at least one side of the roadway during the bridge rehab. They had planned to remove the existing walkway and handrail items and replace with new walkway and handrail items on one roadway side at a time. Thus, there would always be one roadway side open to pedestrian traffic.

However, as a result of the Department's actions that disrupted the fabrication of the steel walkway and handrail items by Quinn's supplier, Outback Metal Fabrication, Inc. the steel walkway and handrail for one roadway side of the bascule span was not received until August 11, 2008 (48 calendar days prior to September 29, 2008) for the remaining roadway side.

As a result of the disruption to the fabrication and subsequently delivery of the steel walkway and handrail items and in an effort to mitigate the impact to the onsite work to be performed, Quinn removed the existing steel walkway and handrail items on both sides of the bascule span roadway prior to the arrival of the new walkway and handrail items. In order to comply with the pedestrian traffic contract requirement, Quinn installed and maintained a temporary walkway,

handrail, and curb on one roadway side of the bascule span until the new steel walkway and handrail was delivered and installed.

If the fabrication and subsequent delivery of the new bascule span steel walkway and handrail items had not been impacted by the department's actions, Quinn would not have had to perform the additional work of installing and maintaining the temporary pedestrian traffic walkway, etc.

Department's Position – Issue #2

The Department's position is that the contract documents clearly indicate that all fabrication is to be performed by an approved Certified Fabricator from the FDOT list of approved fabricators. This required Quinn to subcontract this work to an approved source. This was an issue at the beginning of the project, however, this was overcome and Quinn completed the required closure period within the revised contract time and also finished the balance of the contract within the scheduled contract time.

Even though there were some problems with the fabrication itself, shop drawing approval, testing and painting, Quinn started the bridge closure period on September 29, 2008 as scheduled. This work was completed within thirty-nine (39) calendar days of the allowed forty five (45) calendar days as revised by Supplemental Agreement 32, issued on December 18, 2008 and compensated Quinn on the compression time associated with the reducing the length of the bridge closure period. This supplemental agreement provided additional procurement time for the project to change the bridge closure period from 75 to 45 calendar days with the closure period moved from March 28, 2008 to September 29, 2008.

Contractor's Rebuttal Statement- Issue # 2

In order to mitigate the fabrication stoppage impact to its planned means and methods of removing the existing walkways and handrail and installation of the new walkways and handrail, Quinn performed additional unexpected work procuring, installing, maintaining and removing temporary walkways, temporary curbing, handrail, etc. until the new walkways and handrail was delivered and installed and the bridge closure period began.

Quinn contends they are entitled to additional compensation for the additional costs it incurred to furnish, install, maintain and remove the temporary walkways, temporary curbing, handrail, etc. as a result of the Department's stoppage of fabrication of the walkway items, etc.

Department's Rebuttal Statement – Issue #2

The impacts that Quinn contends occurred were a direct result of their subcontractor. This involved:

- a. Their qualifications as an AISC Simple Bridge Certification
- b. Obtaining approval for welding procedures
- c. Fabrication irregularities
- d. Defective paint
- e. Irregularities with the UT Quality Control testing of sidewalk brackets

f. Temporary Traffic Barrier not meeting Traffic level 3 requirements.

FDOT contends they encouraged and supported Quinn to pursue the replacement of the sidewalk cantilever brackets and pedestrian railing prior to the bridge closure. This work was necessary to shorten the bridge closure period from 75 to 45 calendar days. Nevertheless, DOT did not waive or modify any specification requirements for this work to progress. On Plan Sheet B-5, Scope of Work and General Notes, the type and grade of material is clearly indicated together with the respective members and functional classification.

According to Section 460, Outback Metal Fabrication, Inc. (Outback) did not meet these requirements for fabrication. Outback had already fabricated a number of the pieces. Actually, FDOT questioned Outback's qualifications on April 24, 2008 as to whether they met Section 460 requirements. Nevertheless, Outback continued with fabrication activities throughout the period of April 15, 2008 to June 30, 2008 and beyond.

In consultation with the EOR, and with FDOT's concurrence, it was felt that these pieces could be accepted with Outback's Simple Bridge Certification with conditions. The conditions imposed were that Outback was to correct the outstanding fabrication issues – weld irregularities, weld procedure approvals, quality control UT retesting of failed welds prior to delivery and installation. This is where the delay occurred, all in the Contractor's charge.

This new cantilever bracket and sidewalk fabrication issue was further driven by the contract documents requiring Quinn to maintain one sidewalk open at all times prior to the closure. As the closure period approached and to maintain production, it was evident Quinn would have to either provide a temporary sidewalk on the south side of the bascule span or perform the sidewalk work in the closure period. This is Quinn's means and methods to meet the requirements of the work needed to be completed in the bridge closure period.

Quinn also states that FDOT did stop the fabrication. This is correct. In accordance with Specification 5-3 Conformity of Work with Contract Documents, Quinn is charged with performing the work in reasonable conformity with the contract documents. The FDOT may reject the work and require Quinn to correct the work at no cost to the FDOT. Also, the Department has the authority and right to inspect the work at any time prior to Final Acceptance to ascertain compliance with the contract documents. This occurred during Outback's fabrication activities.

The FDOT contends these issues are all Quinn's responsibility to provide acceptable fabrication in accordance with the contract documents. The FDOT has the right to reject any and all material that does not conform to the contract documents. Until these materials meet the requirement of the contract documents, it is upon Quinn to make any and all adjustments to the project schedule to complete the work within contract time. Therefore, it is Quinn's responsibility to see that the materials fabricated are completed in a manner not to interrupt their means and method of construction.

Quinn was aware that to be able to perform the replacement work, a Temporary Traffic Barrier would be required to protect the drop-off hazard. Their initial proposed temporary traffic barrier

did not meet the Test Level 3 requirement and through several discussions and concurrence with the EOR and FDOT, a lower test Level 2 Temporary Traffic Barrier was accepted. This required modifications to Quinn's barrier. The FDOT compensated Quinn for this additional work.

Throughout the project Quinn's schedule did not indicate issues regarding this delay. Further, Quinn completed the work within the forty five (45) calendar day bridge closure period that was agreed to in Supplemental Agreement #32. The project was substantially completed within the balance of the remaining contract time. As a result, Quinn earned and received the full "incentive" payment for the bridge closure period as stipulated in Supplemental Agreement #32.

Since the delay Quinn is claiming was a result of the steel fabrication by their subcontractor, part of the anticipated delays in the Incentive-Disincentive Agreement does not meet the definition of a delay and compensation was given. Quinn should not be entitled to any further consideration for further compensation and/or time.

DRB Findings - Issue #2

It appears that the Department did approve Outback to do fabrication of the bridge components. (reference email from Linda Houk, Structural Metals Specialist with the FDOT Materials Office in Gainesville on December 12, 2007.) The Department later rescinded this approval, then granted approval again.

Quinn requested at the hearing that the Department pay them for cost delays due to the construction of the temporary sidewalk, curbing and handrails.

DRB Recommendations - Issue #2

The Board finds **entitlement** is due the contractor for costs associated with construction of the temporary sidewalk, curbing and handrails that were not included in the supplemental agreement. The Contractor has a right to rely on the word of the Structural Metal Specialist at the Materials Office. By the time Quinn/Outback received notification of rescission and then the re-approval they had already been forced in to an extra work situation. But for the acts and directives of the Department, the temporary sidewalk would have not been required.

The Board appreciates the cooperation by all parties involved and the information provided to make this recommendation. The RDRB also recognized that this was a very difficult project to build and appreciates the cooperation and professional work ethics shown by both parties.

Please remember that failure to respond to the RDRB and the other party concerning your acceptance or rejection of the RDRB recommendation within 15 days will be considered acceptance of the recommendation.

I certify that I participated in the Hearings of the RDRB regarding the Disputes indicated above and concur with the findings and recommendations.

Respectfully submitted,

Disputes Review Board

Frank E. Proch, Dispute Review Board Chairman

Jimmy B. Lairscey, Member

Rammy Cone, Member

DRB Chairman