

STATE ARBITRATION BOARD

**5615 23rd Street S.W.
Vero Beach, FL. 32968**

Phone (772) 299-3290

FAX (772) 299-3568

March 9, 2007

Brian Blanchard
Director of State Construction Office
Florida Department of Transportation
605 Suwannee Street MS-31
Tallahassee, FL. 32399-0450

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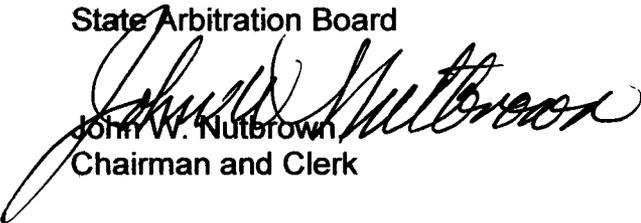
Re Arbitration Order 1 / 2007
DOT Fin Project No. 197574-1-52-01
Polk County, FL.

Dear Mr. Blanchard,

Find enclosed Arbitration Order 1 / 2007 for the above captioned project. A copy of the transcript is enclosed, and copies of the Contractors submittal and the Department rebuttal are being kept by Board Member Ananth Prasad for your use.

Sincerely;

State Arbitration Board


John W. Nutbrown
Chairman and Clerk

Cc: All Board Members

STATE ARBITRATION BOARD

Order No. 1-2007

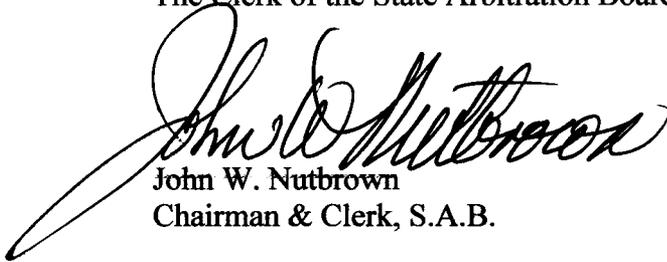
S.A.B. CLERK

MAR 10 2007

FILED

/// NOTICE ///

In the case of John Carlo, Inc. versus the Florida Department of Transportation on Project No. 197574-1-52-01 in Polk County, Florida, both parties are advised that the State Arbitration Board Order 1-2007 has been properly filed with The Clerk of the State Arbitration Board on March 10, 2007



John W. Nutbrown
Chairman & Clerk, S.A.B.

Copy of Order & Transcript to:

Brian Blanchard, Director of State Construction Office
Jon Ford, Regional Manager, John Carlo, Inc.

STATE ARBITRATION BOARD

Order No. 1-2007

RE: Request for Arbitration
John Carlo, Inc.
State Project Fin. No. 197574-1-52-01 in
Polk County, Florida

The following members of the State Arbitration Board participated:

John W. Nutbrown, Chairman
Ananth Prasad, P.E., Board Member
John C. Norton, Board Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 9:30 AM, Friday January 26, 2007

The Contractor, John Carlo, Inc., presented a written request for arbitration of its claim in the total amount of \$166,007.31. The claim arises out of direction by the Florida Department of Transportation requiring additional work and time on the Combee Road Intersection in Polk County, Florida. The Department of Transportation presented a written rebuttal and summary of position. The Board has considered the written submissions and the testimony and evidence presented at the hearing on January 26, 2007 and enters this Order Number 1-2007.

ORDER

The Board is unanimous in this decision.

In the Request for Arbitration the Contractor listed six different claims. The Board will issue this order based on 1,2,4,5,and 6 as these items were settled by the Department prior to this hearing. Issue 3 will be addressed as it was not settled prior to the hearing.

The Contractor in his presentation package requested the Board to rule on what the Contractor considered unjust treatment as to the grade issued by the Department in the Contractors Past Performance Grade. Chairman Nutbrown explained at the start of the hearing that the Board could not rule on this item as it was not a contract issue and was Department policy or procedure.

Issue No. 3 **Signalization**

This issue was caused by a discrepancy on the contract plans as to drill shaft elevations in relation to roadway elevations. The Contractor stated in his presentation that an RFI was issued on May 20, 2004 to the Department. It was determined that the plans did contain a design error and a correction was issued by the Department on July 23, 2004. The work was completed on July 26, 2005 and the Project was accepted by the Department on August 11, 2005.

The Contractor and Department have agreed on compensation for the actual modification as well as appropriate time. The Contractor and Department have not agreed on the matter of time relating to the delay from May 20, 2005 until July 23, 2005 a period of 70 calendar days.

STATE ARBITRATION BOARD

Order No. 1-2007

During the hearing the Board asked a number of questions regarding certain procedures as they happened on the project. Neither the Contractor or the Department could recall what actually happened and these questions were unanswered. This caused the Board to review the actual work accomplished and decide on the following.

After considerable deliberation the Board has reached a decision as follows. The Department has charged the Contractor with 76 days of liquidated damages.

Total Liquidated Damages Charged by the Department	76 Days
Less Granted for Settled Claims	-13 Days
Less Additional Weather Days Granted by the Department	-2 Days
Less Days Granted by Arbitration Board	<u>-29 Days</u>
Liquidated Damages to be Charged Contractor.	32 Days

The Department is ordered to compensate the Contractor in the amount of \$136,746.28 which includes interest at the statutory rate since August 11, 2005.

The Department shall reimburse the State Arbitration Board \$267.40 for court reporting costs.

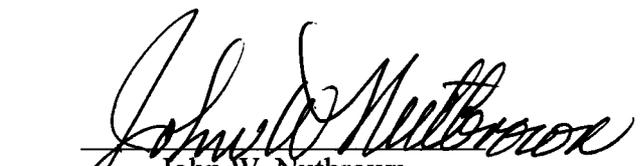
Vero Beach, Florida

Dated: March 10, 2007

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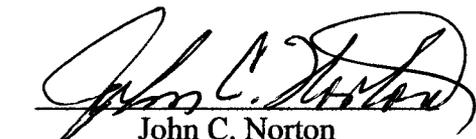
John W. Nutbrown
Chairman & Clerk



John W. Nutbrown
Chairman & Clerk



Ananth Prasad, P.E.
Board Member



John C. Norton
Board Member

1 to this case.

2 The order for proceeding will be for the
3 claimant, in this case, the contractor, to present
4 their claim, and then the respondent to offer rebuttal.

5 Either party may interrupt to make a pertinent
6 point by coming through the Chairman.

7 Our court reporter only has ten fingers, two eyes
8 and two ears, and if everybody tries to talk at the
9 same time I hate to tell you what the transcript looks
10 like.

11 We are here, and we need to go ahead and pursue
12 this thing. There are no attorneys in the room
13 I assume.

14 With that -- the one point the Board will make at
15 the opening of the hearing, there is an item relating
16 to the contractor's past performance grade. This Board
17 is authorized to deal with contract items only. That
18 past performance grade is not a matter of the contract.
19 That is DOT procedure and policy. The Board will not
20 address it.

21 With that, John, it's yours.

22 MR. FORD: Our presentation is very
23 uncomplicated. When we originally requested to have
24 the Arbitration Board review this, this case, in the
25 form work there was the option given to not call

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1 persons to this meeting and just have the Arbitration
2 Board review the exhibits that had been presented.

3 What our intent was was to have the Board review
4 the RDRB's recommendations and make a ruling based on
5 those.

6 We have already gone and done the dog and pony at
7 the RDRB process. I don't have any evidence that
8 carries any more weight than what that very
9 distinguished board did in the regional disputes review
10 board process, in their recommendations. That is what
11 we are relying on. That is what we are asking you to
12 review and make a ruling on.

13 CHAIRMAN NUTBROWN: All right. If you have
14 nothing further at this time --

15 MR. FORD: I don't.

16 CHAIRMAN NUTBROWN: Then we will go ahead and
17 allow the State to make their presentation.

18 MR. ESCOJIDO: The role identification on this
19 project, the owner is FDOT. Contract administration
20 was done by Jacobs Engineering. Metric Engineering
21 performed an independent claims analysis on this job
22 and John Carlo is the contractor.

23 The contractor's claim is laid out as follows.
24 There was a thousand dollar error in their submittal
25 package. Just to point out that the LDs and the DRB

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1 fees were not part of the original RDRB hearings.

2 One thing we want to make mention to is the DRB
3 fees. All we need from the contractor is for them to
4 submit us an invoice and we can process payment for
5 that \$6600. If they do that we will gladly process the
6 payment on the \$6600.

7 The DOT rejected the RDRB recommendations by a
8 letter dated 10-21-05. We felt that the findings were
9 contrary to the pertinent contract documents as well as
10 the facts provided at that hearing. We will go through
11 those facts in a couple of minutes.

12 Again, the specifics of our rejection are
13 outlined in the October 21 letter.

14 Now, at the prompting of John Carlo we went back
15 and we reevaluated the RDRB recommendations. In early
16 2006 we met with John Carlo, or the Department did.
17 Though the Department firmly stood behind their
18 rejection of the ruling, they made an offer to the
19 contractor. That offer was rejected by the contractor.

20 That offer, the Department felt, was based
21 exactly on the RDRB ruling with the exception of the
22 signalization. As you can see, everything shown here
23 was what the RDRB said, with the exception of that
24 signalization.

25 Now, the Department today -- we are still willing

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1 to offer John Carlo that settlement of a little over
2 \$79,000 and 13 additional contract days as full and
3 final settlement.

4 Okay. Issue number three, that is what we will
5 focus on. That is where we are in the discrepancy, the
6 signalization.

7 We found that the contractor's request for
8 additional time had no merit, as neither the original
9 signalization work nor the corrective work, which took
10 place, was a controlling item of work.

11 Then once the contractor completed the
12 signalization work, he continued to work on the other
13 pay items unassociated with the signalization.

14 As such, this was the actually longest path or
15 critical path to complete the project. Therefore, we
16 found there was no entitlement for the time.

17 Now, we will get into the specifics of our
18 rejection of the RDRB ruling.

19 The recommendation said, "It should also be noted
20 that the Department gave the contractor a time
21 extension for the work of correcting the signalization
22 problem."

23 This statement is incorrect. On page four of the
24 DOT paper it specifically states based on the above
25 information the Department compensated the contractor

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1 \$12,415 and change for quantum but found no merit for a
2 time extension. The DRB said we gave them time, but we
3 never did that.

4 Sticking with page four of the DOT position
5 paper. We stated that the contractor's request for
6 additional time has no merit as the signalization was
7 not a controlling item of work.

8 On page four, "The contractor worked on other
9 items of work, including punch list items through the
10 last chargeable contract day."

11 Moving further into the board's recommendation,
12 it stated that the signalization installation was on
13 the critical path in the March 31, 2004 update. We are
14 going to show you where that statement is also
15 incorrect.

16 Again, the Department's position was that the
17 contractor's request for additional time had no merit
18 as the signalization was not a controlling item of
19 work.

20 This is an excerpt from page four. This is our
21 actual papers. We just pulled it out so we could show
22 you. That is where we took all of our quotes. We
23 feel -- these are the facts we presented.

24 Now, I'm going to turn over this to Bill so he
25 can discuss the schedule with you.

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1 there was a signalization issue. That is important in
2 that the traffic signals are already six days behind
3 schedule and the final adjust already nine days behind
4 schedule.

5 They were behind schedule prior to ever knowing
6 of this signalization issue.

7 Once again, the signalization flow, minus six,
8 minus nine on the March 31 update.

9 This is a very important slide. The March 31
10 update depicted set traffic signal poles with negative
11 six-day flow.

12 Here are the other activities -- 31 other
13 activities in phase two prior to ever getting to the
14 signalization potential delay show negative nine days
15 of flow.

16 It is clear from this, these are all
17 nonsignalization items within the contractor's own
18 accepted schedule.

19 Nine days negative flow on all of these
20 nonsignalization items clearly depicts that
21 signalization work still in phase two was not on the
22 critical path.

23 Also I want to point out the March 31 update,
24 activity, final adjust traffic signals, minus nine days
25 of flow. That is in day seven. As depicted on the

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1 MR. WAGES: I'm certain all of you are very
2 knowledgeable in scheduling. We will not go over all
3 of the details of it. We will hit the highlights.

4 The critical path of the project is truly one
5 path. That is the longest path. The signalization was
6 not on that path.

7 What items were on the longest path? Our point
8 is the signalization was not on the critical path.

9 A review of the original schedule as well as the
10 March update support that the signalization was not on
11 the longest path of the project.

12 The original schedule depicts flow for many of
13 the signalization activities. Just wanted to point
14 that out, the nine days, the nine days.

15 This is the contractor's original schedule. This
16 is excerpts right out of the schedule. It depicts nine
17 days for many of the items. There are a couple of
18 items that show total flow zero. There was also 31
19 nonrelated items in the original schedule that depicted
20 zero flow.

21 The March 31 update. This is the update that is
22 closest to the time that the signalization issue
23 occurred, the most accurate schedule that will reflect
24 that based on 873 of the specifications.

25 This is still in advance of ever even knowing

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1 previous slide, 31 items of work with negative nine
2 days of flow.

3 Further review of the schedule indicated activity
4 ID 704 is showing to have an early start of May 11,
5 though they started May 2.

6 We had some logic errors in the schedule. Here
7 is a schedule logic report depicting some false logic.
8 Some of the predecessors were taken away, depicting
9 artificially inflated flow.

10 Again, the schedule update report shows the logic
11 errors, here we have the minus nine days of flow,
12 activity ID 704.

13 This is a very important slide in that the
14 March 31 update, our review also found impacted
15 negative nine days of flow. It began on phase two.
16 Why is that important, because the activity that was
17 allegedly delayed, the signalization, did not occur
18 until well after this. This is right out of the
19 contractor's own schedule.

20 These are all the other activities that have
21 absolutely nothing to do with the subcontractor
22 performing the signalization repair.

23 There is nine negative flow in all of these
24 activities, whereas the contractor schedule depicted
25 the schedule being minus six.

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1 With the March 31 update schedule review,
2 activity ID 704 was not a controlling item of work.

3 We found some logic errors. The starts and
4 finishes were backwards. As a result of faulty logic
5 and data errors, the schedule update is not a reliable
6 method of identifying any of the signalization
7 activities. That is a controlling work items.

8 George will get into the detail showing all of
9 the additional work that was performed after the
10 signalization repair. George.

11 MR. ESCOJIDO: When we look at the plan error --
12 and this is based on a letter from the subcontractor
13 dated October 15, 2004. The contract -- the
14 subcontractor notified John Carlo on April 8, 2004.
15 That was 43 days prior to John Carlo notifying the
16 Department of this issue.

17 What is important about that is mostly the
18 specifications clearly tell the contractor that -- do
19 not take advantage of any apparent error or omission
20 discovered in the contract documents, but immediately
21 notify the engineer.

22 The engineer was not notified until 43 days after
23 the known error.

24 Now, on May 20 when the Department was notified,
25 they got to work on this thing. We were working with

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1 These are some of the items the contractor was
2 working on after the signalization was completed. We
3 had drainage going on, pavement grinding, street
4 lighting, asphalt placement, sign placement and so on.
5 These were the items on that longest path, the critical
6 path. The signalization was not ever on that critical
7 path.

8 And, you know, since all of these items -- the
9 street lighting, the pavement grinding, the asphalt
10 placement -- continue through final acceptance on
11 August 11, these, again, are the controlling items of
12 work. Therefore, the Department requests that the
13 Board find that there is no merit in regards to the
14 signalization.

15 Now, something that is important to really
16 understand here is what really took place out there,
17 what this was about.

18 The signalization was installed. The problem was
19 that we didn't have clearance. All right -- the proper
20 clearance.

21 The signalization was installed. Traffic is
22 running under it. We didn't have the clearance that we
23 needed. So, what we did is we made a \$12,000 fix. Of
24 that \$12,000, roughly \$500 was in materials. Okay, the
25 other was just in time coming back and forth and

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1 ALS and John Carlo trying to figure this out.

2 On June 15 -- and that is an important date,
3 because ALS completed all of the original signalization
4 on that date.

5 Everything that was originally bid in the plans
6 was complete. All right. They were ready to turn them
7 signals on.

8 On that very same day, 26 days after being
9 notified, the Department provided a repair procedure.
10 All right. They gave them a repair procedure to fix
11 this. ALS went out there. There was some tweaking
12 that needed to be done.

13 Then ten days later the Department came back and
14 gave them additional direction to achieve the clearance
15 on those signals.

16 On July 26 the signal repairs were complete. All
17 right. And what is so important about that is all of
18 the signalization was done at that date. However, the
19 contractor and the subs continued to work through
20 August 11, 2004, the last chargeable contract day, to
21 complete that work.

22 As such, you know, it's clear that the original
23 contract work being performed by the contractor and the
24 subs was the controlling item. That was the longest
25 factor.

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1 equipment.

2 The manpower and the equipment. So, we are
3 talking about a \$12,000 issue with \$500 worth of
4 materials to correct this issue. The Department,
5 again -- we paid the contractor for that. We already
6 agreed on the quantum.

7 Now, the Department -- we feel we have continued
8 to work in good faith on this, in trying to get this
9 issue settled with John Carlo. As of a couple of weeks
10 ago we made John Carlo another offer.

11 We went back and looked and we found two rain
12 days that we should go ahead and grant them to increase
13 from 13 to 15 days, which that basically would increase
14 the monies offered on our original \$79,000
15 approximately \$1,000 or \$2,000.

16 Okay. The other thing we did was we went back
17 and we looked, and in trying to be fair we looked at
18 their grade. We said is there any time that we may be
19 able to waive on their grade. We found some time.
20 Therefore, we offered them a little over \$80,000, the
21 15 days and to adjust their contract rate from a 61 to
22 a 76. That's where the Department stands today.

23 MR. WAGES: Thank you very much. That concludes
24 our presentation.

25 CHAIRMAN NUTBROWN: Okay. Does the Board have

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1 any questions?

2 MR. PRASAD: I have a couple of questions. The
3 \$12,000 that was paid I guess through a supplemental
4 agreement or work order, did they reserve the right for
5 time extension or was it for full and final settlement?

6 MR. ESCOJIDO: They've always reserved their
7 time.

8 MR. PRASAD: A question to John Carlo would be,
9 those activities that the Department showed that were
10 being performed after the signalization work was
11 finished, which was on one of those slides --

12 CHAIRMAN NUTBROWN: The last one.

13 MR. PRASAD: Drainage and fencing, what is
14 your -- any comments on that? Is that in any way
15 related to signalization or --

16 MR. AMMON: I can comment. Some of the items
17 were on the punch list. It would be very convenient to
18 have concurrent work for John Carlo at the same time
19 that this signalization was a problem. Let me just
20 state that. So, I felt some of that was going on.

21 A couple of the items, striping in particular and
22 signage in particular, were late change orders after
23 time would have expired on the job.

24 I'm not exactly sure, might have been May, June
25 or even July when we got final configuration of the

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1 work, I would like to see that. Was it presented?

2 MR. FORD: It would be in the original paper if
3 there was any.

4 MR. AMMON: Or part of the RDRB.

5 MR. PRASAD: The signalization work was finished
6 on, what, June -- when was that?

7 MR. NORTON: July 26.

8 MR. PRASAD: The 26th of July.

9 MR. SANDS: The fix.

10 MR. PRASAD: The fix was finished. After the
11 July 26 fix -- well, let me back up.

12 MR. SANDS: It's really earlier than that. On
13 June 25 they had the fix. It took them three days, but
14 it took them until July 26 to do that. So --

15 MR. PRASAD: On the 25th the Department provided
16 direction on how to achieve the clearance.

17 MR. SANDS: Correct. From June 25 to August 11
18 they were still working on all kinds of items, plus for
19 three days they came in and did the signalization fix.

20 MR. PRASAD: Say on June 25 you provided the
21 direction. According to the time line, July 26 is when
22 they finished, right?

23 MR. SANDS: Right.

24 MR. PRASAD: How long would it have taken -- how
25 long would the work to fix have taken?

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1 striping. So, there was some of that going on as well.

2 There was some disputed items. The grinding was
3 a late item because there was a dispute about
4 attenuator bolts and their effect on traffic. They
5 stuck up a half inch or something. They weren't down.
6 It was a disputed item. I think it went all the way to
7 Tallahassee, the dispute.

8 Once we got the disputed resolution on that, we
9 immediately ground the area, got the bolts out of there
10 and ground it. So, there was some of that as well.

11 Overall, the fact was the signalization to the
12 time, I mean as the RDRB said it was concurrent. There
13 were those types of activities that were ongoing.

14 If I may, their analysis goes into a March
15 schedule, like they said, prior to the signalization
16 problem even coming to light.

17 Shortly after that schedule was submitted, we
18 requested a DRB meeting. It took over a year to get
19 the RDRB to meet.

20 MR. PRASAD: Did you present anything? You said
21 some of these items were late change orders. Was
22 anything presented in your position papers indicating
23 that? I don't think I saw anything. Such as drainage.
24 If we added a pipe, if the Department added a pipe,
25 even after your LDs and you finish the signalization

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1 MS. McCALL: Three days.

2 MR. SANDS: Three days.

3 MR. FORD: We don't particularly agree with those
4 dates. We didn't think there were issues with the --
5 correct me if I'm wrong --

6 MR. AMMON: Up to August 11 --

7 MR. FORD: There were some issues with the
8 initial fix given. We were working up through and
9 until July 26 -- excuse me, July 23. Then I think we
10 represented that the fix was completed three days
11 after.

12 MR. AUTRY: Right.

13 MR. ESCOJIDO: The actual -- the original
14 signalization was completed on June 15. On that date
15 the Department provided the contractor with the
16 corrected measure to achieve that additional 15 inches
17 we needed for clearance.

18 Now at that point ALS went out there and said,
19 hey, this isn't quite working the way it is supposed to
20 on that piece of paper. They sat down. Everybody got
21 together. They said, hey, if we make these
22 adjustments, we can make that happen.

23 Ten days on the -- on June 25 the Department
24 provided the final repair. However, not until July 26
25 was that work performed by the contractor.

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1 MR. NORTON: I believe it was performed on the
 2 23rd and they finished it on the 26th.
 3 MR. AUTRY: That's correct.
 4 MR. ESCOJIDO: Three days.
 5 MR. WAGES: And in answering part of the question
 6 earlier, items of work completed after signalization
 7 repair was drainage, fencing, sign placement, final
 8 striping, sodding, asphalt placement, street lighting,
 9 pavement grinding. I'm not certain if a couple of
 10 those may not have been in contention, but I'm
 11 relatively certain that they all weren't.
 12 This was original contract work for the most
 13 part. That's our position.
 14 MR. ESCOJIDO: And why we reference the March 31
 15 update is because that is what was originally presented
 16 in the DRB. That is what is referenced in the DRB
 17 recommendation.
 18 MR. AMMON: Also speaking to the schedule, prior
 19 to the March 31 submittal, there was extra time for
 20 additional items that affected the schedule and had not
 21 been placed in the schedule yet because we hadn't been
 22 granted time on that.
 23 There is -- I'm sure if you read it, there's four
 24 different quadrants. There was something additional in
 25 each quadrant we encountered.

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1 MR. NORTON: At the 25th you got the fix. The
 2 fix was completed on the -- the 25th of June you got
 3 it. The 26th of July it was completed. Why the break
 4 in there? If it's a three-day repair, what is the --
 5 MR. AMMON: There was something, and I can't
 6 remember exactly what, but there was something at the
 7 start of that final three days of work that was still a
 8 mess. There was still a problem with the fix. The fix
 9 wasn't a hundred percent correct. I can't remember
 10 what that was.
 11 MR. NORTON: What you are telling me --
 12 MR. SANDS: We disagree with that.
 13 MR. NORTON: You are telling me between the 25th
 14 of June and the 23rd of July you were still working on
 15 the fix. There was something that wasn't correct and
 16 you were trying to fix or get fixed?
 17 MR. AMMON: Right.
 18 MR. NORTON: Could it have been that some of the
 19 work that was done at a later date was because you
 20 needed MOT for the fix and you did that work during the
 21 MOT for the fix so that it worked together?
 22 MR. FORD: My recollection is we were still
 23 working through the design. It had something to do
 24 with the cantilever and support of that, but I don't
 25 recall the details.

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1 MR. NORTON: A minute ago you said something,
 2 that there was work that you had set up that would work
 3 better while the fix was going on. Is that something
 4 to do, like striping? Did you use the same MOT for the
 5 lights that you did the striping so that it was
 6 reasonable to hold off on the striping?
 7 MR. AMMON: Again, I don't recall.
 8 MR. NORTON: All right.
 9 MR. PRASAD: I guess my question to you guys, say
 10 if there were nondisputed items of the work that was
 11 not finished, likes those six or seven or eight --
 12 whatever those were on the slides. If you are in LDs
 13 you would think that you would be working on those to
 14 get it all finished up, right, so that the only thing
 15 remaining is fixing the light, fixing the signal light
 16 and doing anything associated with it.
 17 Okay, maybe there's loops, maybe something to do
 18 with loops. It looks to me there are a lot of days
 19 here where no work was done by the prime since June 25.
 20 MR. AMMON: This was a 90-day, fast pace
 21 schedule. District I had its own internal problems at
 22 that point.
 23 MR. PRASAD: Such as?
 24 MR. AMMON: I think it's all a matter of record.
 25 There was lots of turn-over in the DOT District I at

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1 that time.
 2 We requested a DRB early on, thinking that this
 3 would run into time. We weren't getting granted any
 4 time.
 5 We requested the State's presence at all of our
 6 weekly progress meetings. They didn't show up.
 7 It may have been that we actually got late change
 8 orders and we were performing work outside or prior to
 9 receiving change orders as well.
 10 I just think by that time, by June the attitude
 11 of the project had deteriorated to the point where we
 12 felt we were substantially complete. In June we
 13 actually requested substantial completion.
 14 Then this signalization continued. It was just a
 15 matter of fighting to get punch lists and getting those
 16 punch lists final.
 17 MR. PRASAD: Again, refresh my memory. The DRB
 18 said there was entitlement, but what did they say?
 19 MR. SANDS: Can I rebut that last statement real
 20 quick?
 21 MR. PRASAD: Sure.
 22 MR. SANDS: He makes mention of, I don't know,
 23 problems in District I. If there's nothing in the
 24 paper, I don't agree with that. We had a CEI on the
 25 job. It was Jacobs Engineering. They had their

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1 inspector, their PA out there all the time. We did
2 have a project manager from Bartow operations who was
3 heading that up.

4 So, I'm not sure where that statement comes from.

5 MR. AMMON: What I'm really getting at, the
6 attitude of the project was a 90-day, fast pace,
7 24-hour-a-day project. That's the way we all
8 approached it in the beginning.

9 In May and June that attitude had deteriorated.
10 We had pretty much exhausted the 90-day period, when
11 everyone was going to carry that type of attitude.

12 When we hit the Verizon problem and we needed
13 some utilities changed in a hurry or moved in a hurry
14 so we could continue on our progress, they closed up
15 shop on Friday afternoon at three o'clock, and we are
16 sitting there all weekend working in the area
17 piecemeal.

18 From that point on we felt that the Department or
19 the CEI or whoever made the decision that time was not
20 an issue at that point anymore.

21 I'm just saying that that is the feeling on the
22 job.

23 MR. NORTON: I know you called for an inspection.
24 According to the documents you called for an inspection
25 or an inspection was called for on August 4 and you

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1 MR. NORTON: This doesn't tell me much. It says
2 street lighting. What is street lighting?

3 MR. ESCOJIDO: They were working on street
4 lighting.

5 MR. SANDS: The highway lighting.

6 MR. PRASAD: Doing what?

7 MR. NORTON: Doing what? Is this something that
8 could have been done any time or is this something that
9 just came up? Did a light go out?

10 MR. ESCOJIDO: I know they were working on some
11 of it. One of the things they were working on is they
12 had broken the conduit previously when they were doing
13 some work. One of those days was some repairs to the
14 street lighting.

15 MR. NORTON: You say the grinding, Jon, was
16 something that you had to wait on direction?

17 MR. AMMON: Correct.

18 MR. NORTON: On the grinding?

19 MR. AMMON: There was one small area that needed
20 to be ground. There was some attenuator bolts in that
21 area.

22 MR. SANDS: Are you talking about concrete
23 grinding?

24 MR. NORTON: It says pavement grinding.

25 MR. SANDS: You are talking about grinding some

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1 didn't get it to the 11th? You were done on August 4?

2 MR. AMMON: I believe so.

3 MR. SANDS: Does it show work going on until the
4 11th?

5 MR. ESCOJIDO: If you review page 84 of the
6 Department's submittal, it breaks down what was going
7 on on the project day by day, from June 6, 2006 until
8 8-13-06. You will see that after August 3 they were
9 working on signing, punch list items, signalization,
10 inspection, asphalt, repairing --

11 MR. NORTON: What page?

12 MR. ESCOJIDO: Page 84. It's behind the tab --
13 backup documentation.

14 CHAIRMAN NUTBROWN: Way in the back.

15 MR. ESCOJIDO: Look behind the tab that says SAB
16 backup documentation. I believe it's the third tab.
17 Then go to page 84. Did you find it?

18 CHAIRMAN NUTBROWN: You have the same thing
19 I did.

20 MR. ESCOJIDO: You can see on there the days of
21 no work and the actual days they were working.

22 MR. WAGES: We compiled this from the daily
23 reports of construction.

24 MR. AUTRY: To answer your question they
25 performed work on 8-4, 5 and 6.

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1 bolts or something. Sounds like we are talking about
2 two different things.

3 MR. AMMON: I'm talking about pavement.

4 MR. NORTON: It was grinding on the pavement
5 around an attenuator?

6 MR. AMMON: Right.

7 MR. NORTON: Is that a punch list item or
8 something that came up because the bolts were too high
9 by design?

10 MR. AMMON: The bolts, when they took the
11 attenuator out, they cut off the bolts. Evidently they
12 stuck up a quarter of an inch high out of the ground,
13 whatever distance out of the ground. They said that
14 was a problem. We disputed that. Our subcontractor
15 disputed that.

16 MR. ESCOJIDO: Gentlemen, if you look on page 84,
17 look at date 7-14 and 7-15, you will see those are the
18 two dates that that attenuator work took place.

19 MR. NORTON: What you are telling me then is that
20 between 7-14 and 8-2 there was an argument over the
21 attenuator bolts and it was finally done on 8-2?

22 MR. SANDS: No, on 7-14 --

23 MR. ESCOJIDO: The attenuator work was done on
24 July 14 and July 15.

25 MR. PRASAD: What is the pavement grinding work

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1 on August 27
 2 MR. AMMON: That is when Eagle finally got their
 3 schedule free to get there, I guess.
 4 MR. PRASAD: That was not relating to the
 5 attenuator work?
 6 MR. AMMON: It's in the same area. Once the
 7 bolts were chopped down, we had to grind that area.
 8 MR. SANDS: I don't think that's what the dailies
 9 represent.
 10 MR. PRASAD: Why didn't you get there on 7-17 or
 11 7-16?
 12 MR. AMMON: I just recall their schedule being
 13 tight.
 14 MR. NORTON: In other words, it was a small job
 15 and the contractor couldn't get there until that time?
 16 MR. AMMON: Right.
 17 MR. NORTON: I have one other question. I know
 18 in ALS' letter of October 15 it says you were notified
 19 about the problem on April 8, but I don't see anything
 20 in any of the documents anywhere that tell me how you
 21 were notified other than an October 18 letter where ALS
 22 says they notified you back in April of the problem.
 23 Is there a document? This is the State's
 24 contention that ALS said that the contractor was
 25 notified on April 8. Is there any other documents

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1 other than that October 15 letter that shows that they
 2 were notified on April 8?
 3 MR. SANDS: We wouldn't have it. That's internal
 4 correspondence between those two.
 5 MR. NORTON: Would you have anything that would
 6 show an April 8 date?
 7 MR. AMMON: (Shaking head negatively)
 8 MR. NORTON: As far as you are concerned it was
 9 the May 15 date that they notified you in the letter
 10 that we do have?
 11 MR. AMMON: Right.
 12 MR. SANDS: Jack, that's only one point.
 13 MR. NORTON: I understand, but it's a question
 14 I wanted to ask.
 15 MR. SANDS: Absolutely. It's only one point.
 16 The issue is that it really wasn't a controlling item,
 17 whether they were notified then or not.
 18 Of course, that time could have helped both sides
 19 resolve that issue.
 20 MR. AMMON: It was listed as a controlling item
 21 on our controlling items of work.
 22 MR. NORTON: Okay. I'm done.
 23 CHAIRMAN NUTBROWN: Ananth?
 24 MR. PRASAD: I'm done.
 25 MR. SANDS: Did you want to ask that question

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1 before, where I asked if we could rebut? You were
 2 getting into the ruling or something.
 3 MR. PRASAD: No, I found the ruling. The ruling
 4 was not -- it was entitlement and quantum I think is
 5 what the RDRB rule is, right?
 6 MR. AUTRY: It originally was for entitlement,
 7 but based on their recommendation you could use
 8 quantum.
 9 MR. PRASAD: Where is the ruling of the disputes
 10 review board?
 11 MR. ESCOJIDO: It's in our backup documentation
 12 behind the SAB documentation. It would start on page
 13 two -- I'm sorry, hold on. Page five.
 14 MR. PRASAD: Okay.
 15 MR. ESCOJIDO: Ruling for the signalization, that
 16 issue is shown to start on page 11. And it is closed
 17 out on page 12.
 18 MR. PRASAD: That was my point, the DRB ruled on
 19 entitlement of quantum, but did rule on quantum, also.
 20 Their recommendation was to give 64 days, correct?
 21 MR. ESCOJIDO: Sixty-four noncompensable days.
 22 MR. NORTON: Yes.
 23 MR. PRASAD: All right.
 24 CHAIRMAN NUTBROWN: Does the contractor have
 25 anything else to add?

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1 MR. FORD: No.
 2 CHAIRMAN NUTBROWN: The Department have anyth
 3 else they want to add or any comments?
 4 Okay. The hearing is hereby closed. The Board
 5 will meet and deliberate on the claim. Usually we say
 6 that the order will be issued within six weeks of this
 7 hearing. However, we have had in a case where we end
 8 up getting the transcript and the order is due in about
 9 ten days, so approximately a month after we get the
 10 transcripts we will have the order out and distributed.
 11 Okay. There being nothing else, gentlemen,
 12 I thank you for your time.
 13 MR. FORD: Thank you for your time.
 14 CHAIRMAN NUTBROWN: And we will proceed from
 15 there.
 16 (Whereupon, the hearing was concluded at 9:50 a.m.)
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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 COUNTY OF LEON)

4 I, CATHERINE WILKINSON, Court Reporter, do hereby
5 certify that I was authorized to and did stenographically
6 report the foregoing proceedings; and that the transcript is
7 a true record of the testimony given.

8 I FURTHER CERTIFY that I am not a relative, employee,
9 attorney or counsel of any of the parties, nor am I a
10 relative or employee of any of the parties' attorney or
11 counsel in connection with the action, nor am I financially
12 interested in the action.

13 Dated this _____ day of January, 2007.

14

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

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CATHERINE WILKINSON & ASSOCIATES (850) 224-0127