

STATE ARBITRATION BOARD

1022 LOTHIAN DRIVE
TALLAHASSEE, FL 32312-2837

PHONE: (904) 385-2852 OR (904) 942-0781 FAX: (904) 942-5632

10 NOVEMBER 1993

NOTICE

In the case of Edisto Contracting, Inc. versus the Florida Department of Transportation on Project No. 10040-3582 in Hillsborough County, Florida, both parties are advised that State Arbitration Board Order No. 7-93 has been properly filed on November 10, 1993.



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

S.A.B. CLERK

NOV 10 1993

FILED

Copies of Order and Transcript to:

Mr. J.B. Lairscey, Jr., PE, Director Office of Construction/FDOT
Mr. Steven E. Gamm, President/Edisto Contracting, Inc.

STATE ARBITRATION BOARD

ORDER NO. 7-93

RE:

Request for Arbitration by
Edisto Contracting, Inc. on
Job No. 10040-3582 in
Hillsborough 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 9:35 a.m., Wednesday,
September 8, 1993. The Board Members, having fully considered
the evidence presented at the hearing, now enter their order
No. 7-93 in this cause.

ORDER

The Contractor presented a request for arbitration of a
claim for additional compensation in the amount of \$49,984.64
for costs incurred due to an alleged change by the Department
of Transportation in the contract requirements for
maintenance of traffic. Additional compensation is claimed
for three cost items all of which arose from the alleged
change in maintenance of traffic requirements.

The Contractor presented the following information to
support entitlement to additional compensation:

1. In bidding this project based on the wording of the
contract documents, we anticipated doing the subgrade

stabilization, base widening and paved shoulder construction during daylight hours while maintaining two-way traffic on the existing two lanes of pavement. We anticipated closing one lane for short periods of time for short term operations such as placing concrete in the box culvert extension. Our asphalt subcontractor was prepared to do the paving work that would require a lane closure at night.

2. At the preconstruction conference, the Department of Transportation advised us that no work could be done that caused a dropoff in excess of 3" within four feet of the edge of a travelled lane and that, per a plan note, two-way, two-lane traffic must be maintained on a minimum 12' lane between 6:30 a.m. and 8:00 p.m. The Department's interpretation meant that the work we anticipated doing during daylight hours while maintaining traffic on the existing pavement would have to be accomplished at night.

3. If consideration is given to the industry standard that the special provisions govern over the plans, the following provisions of the contract documents support our position that the work we anticipated doing during daylight hours could be accomplished during daylight hours without a lane closure:

a. The special provisions (5.7) state that "in general, all work shall be performed during daylight hours".

b. A General Note on Plan Sheet No. 8 states "Two-Way traffic shall be maintained between the hours of 6:30 a.m. and 8:00 p.m. on the existing pavement."

c. The special provisions (2.2) provide that "The Contractor may be allowed to restrict traffic to one-way operation for short periods of time provided that adequate means of traffic control are effected and traffic is not unreasonably delayed."

d. A note on Sheet No. 8 of the plans provides that asphalt pavement construction shall be done while maintaining traffic in accordance with Index No. 604. This Index details work on a two-lane road with one lane closed to traffic.

e. The plan quantities include 30 barricades per day.

If the Department knew that certain operations must be performed at night in order to avoid unreasonable delays to traffic, why did they not specifically state this in the contract documents?

5. If the Department intended for Index No. 604 to apply to widening and paved shoulder work, why did it not specifically state this in Note Nos. 1 and 2 under Sequence of Construction on Sheet No. 8 of the plans as it did for asphalt paving in Note No. 3?

6. After additional calculations in accordance with their Lane Closure Guide, the Department decided that we could conduct the operations required to construct base widening and shoulder pavement during daylight hours except for the hours between 2:30 p.m. and 6:00 p.m provided that we maintained a minimum six feet of offset between the edge of a traveled lane and the dropoff. This forced us to establish

one-way traffic during the hours we were working on these operations and to restrict our working hours to before 2:30 p.m.

The Department of Transportation rebutted entitlement to additional compensation as follows:

1. The Department's Standard Specification book is not applicable to this contract. We establish the coordination of contract documents on our District contracts based on industry standards. The contract package contained the following documents:

General District Contract Specifications

Project Detail Specifications

Supplement to the Special Provisions

The provision in regard to all work being accomplished during daylight hours was in the General District Contract Specifications and was, therefore, overridden by: (1) the plan note setting out hours during which lane closures are prohibited; (2) the requirement in the Project Detail Specifications that "Except as otherwise specified herein, on the plans or in the special provisions, the Contractor shall maintain one lane of traffic in each direction"; (3) and the requirements in the Supplement to the Special Provisions dealing with operations being done in accordance with Index Nos. 600 through 700 and in accordance with the Department's District 7 Lane Closure Guide.

2. The Maintenance of Traffic Plan submitted by the Contractor indicated that he would maintain traffic in

accordance with Index No. 604 and Index No. 605. Index No. 604 provides that there must be a lane closure when work is to be accomplished within two feet of a travelled lane. Index No. 605 is applicable to only intermittent or continuous moving operations, which is not the case for widening and shoulder pavement construction.

3. Sheet No. 5 of Index No. 600 as referenced in General Note No. 1 on Plan Sheet No. 8 sets out the criteria for Dropoffs in Work Zones.

4. It is our position that the contract documents, when considered in their entirety, require that the widening and shoulder pavement work must be done with a lane closure in effect which is prohibited between 6:30 a.m. and 8:00 p.m.

The Contractor presented the following information to support each item of additional compensation:

PART I \$28,651.82

We anticipated beginning work on June 7, 1992, the date on which the Department issued the initial notice to proceed. We were delayed in beginning work until July 13, 1992, while the Department was considering our position on working during daylight hours. We incurred costs for idle equipment and unrecovered General and Administrative expenses during this period. We are entitled to interest on these amounts beginning September 15, 1992.

PART II \$18,308.82

During the days we were working on items related to base widening and shoulder pavement with a lane closure in effect,

we incurred costs for flagmen, labor and equipment to place and remove lane closure barricades and idle equipment due to the forced reduction in the length of our working day. We are entitled to interest on these amounts beginning September 15, 1992.

PART III 9 CD @ \$300 = \$2700.00 + Interest \$324.00 = \$3,024.00
We are claiming release of the liquidated damages assessed by the Department based on the delays described in PART I and PART II of our claim. We are entitled to interest on this amount beginning September 15, 1992.

The Department of Transportation rebutted each item of additional compensation as follows:

PART I The Contractor stated at the Preconstruction Conference that he did not intend to begin work until June 15th. The delay in beginning work resulted from the Contractor requesting a change in the contract requirements to allow work during the daytime. During the period that we were considering the Contractor's request to work during daylight hours, we were not studying whether the contract provisions required the operations in question to be done at night. We knew from day one that the contract required this work to be done at night with a lane closure. We were evaluating whether we could afford the Contractor some relief on the hours that two-way traffic must be maintained during the summer period when the work was performed, because less traffic would be encountered due to the adjacent school being closed. Our analysis gave such relief because it allowed the

Contractor to work during daylight hours with certain restrictions.

The Contractor submitted no documentation for his Company General and Administrative costs. The equipment rental rates were not in accordance with DOT policy for reimbursement of idle equipment costs (50% of Blue Book rates).

PART II Compensation for flagmen is included in the lump sum pay item Maintenance of Traffic. One-half hour per day is an excessive amount of time to set up barricades for a lane closure. The Contractor's work day was not shortened by 1 1/2 hours as claimed because the Contractor's three man crew was working on work not requiring a lane closure after 2:30 p.m. Lane closures were in effect on only 27 days, not 36 days as stated by the Contractor. The comments on equipment rental rates and Company General and Administrative costs address in regard to Part I also apply here.

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

1. The contract documents do not specifically provide for work being accomplished immediately adjacent to the edge of a traveled lane (base widening and subgrade stabilization) to be accomplished at night.
2. The District 7 Lane Closure Guide is essentially a design standard used by the Department in developing maintenance of traffic schemes.
3. Index Drawing No. 600 allows dropoff immediately adjacent

to a traveled lane in an active work zone (hours when the contractor is working) if appropriate Warning Devices are place.

4. The contract did not include a provision setting out coordination of the contract documents.

From the forgoing 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 in the amounts indicated below for each part of his claim:

PART I \$ 9,500.00

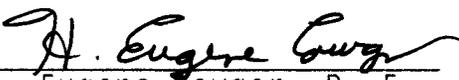
PART II \$ 11,000.00

PART III Release all assessed liquidated damages plus \$324 as interest.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$350.20 for Court Reporting Costs.

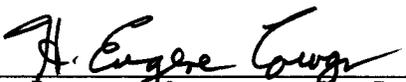
Tallahassee, Florida

Dated: 10 Nov 1993


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

Certified Copy:


K. N. Morefield, P. E.
Member


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


John P. Roebuck
Member

10 November 1993
Date

S.A.B. CLERK

STATE ARBITRATION BOARD
STATE OF FLORIDA

NOV 10 1993

FILED

EDISTO CONTRACTING, INC.)

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PROJECT NO. 10040-3582

- and -)

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LOCATION: Hillsborough
County, Florida

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DEPARTMENT OF TRANSPORTATION)

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ORIGINAL

RE: Arbitration In The Above Matter

DATE: Wednesday, September 8, 1993

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

TIME: Commenced at 9:35 a.m.
Concluded at 11:40 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 EDISTO CONTRACTING, INC.:

Mr. Duane Gamm
 Mr. Steve Gamm

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Ms. Sandra Piccirilli
 Mr. Frank Proch
 Mr. Tony Harvey
 Mr. Keith Driggers

* * *

I N D E X

EXHIBITS	PAGE
Exhibit Nos. 1, 2 and 3 in evidence	5
CERTIFICATE OF REPORTER	70

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. John Roebuck was elected by the
8 construction companies under contract to the Department
9 of Transportation.

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

13 Our terms of office began July 1, 1993, and
14 expire June 30, 1995.

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

18 (Whereupon, all witnesses were duly sworn.)

19 CHAIRMAN COWGER: The documents which put this
20 arbitration hearing into being are hereby introduced as
21 Exhibit No. 1.

22 (Brief pause)

23 CHAIRMAN COWGER: Exhibit No. 1 consists of the
24 request for arbitration as submitted by the contractor
25 and all of the documents that were attached to that

1 submittal. That includes a letter from the contractor
2 dated August 5, 1993 and a summary of claims as
3 revised, which was distributed to all of the parties.

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

6 (Discussion off the record)

7 CHAIRMAN COWGER: During the time that we were
8 off the record, DOT submitted an exhibit consisting of
9 a summary --

10 MS. PICCIRILLI: That's just an outline.

11 CHAIRMAN COWGER: What is this?

12 MS. PICCIRILLI: Just an outline.

13 CHAIRMAN COWGER: Of what they're going to talk
14 about and a package of information summarizing their
15 position. Is that a fair statement?

16 MS. PICCIRILLI: Yes, sir.

17 CHAIRMAN COWGER: That package will be identified
18 as Exhibit 2.

19 The contractor submitted a copy of a letter
20 dated September 3, 1993, from R & K Enterprises,
21 another bidder on this project, which will be
22 identified as Exhibit 3.

23 Does either party need additional time to examine
24 these exhibits?

25 MR. ROEBUCK: Anything in here that surprises

1 you?

2 MR. DUANE GAMM: I don't know. This is the first
3 we have seen it.

4 MS. PICCIRILLI: I think we --

5 CHAIRMAN COWGER: Let's go off the record a
6 minute.

7 (Discussion off the record)

8 (Whereupon, Exhibit Nos. 1, 2 and 3 were received in
9 evidence.)

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

18 The parties are requested to assure that they
19 receive properly identified copies of each exhibit
20 submitted during this hearing and to retain these
21 exhibits. The Board will furnish the parties a copy of
22 the court reporter's transcript of this hearing, along
23 with its final order, but will not furnish copies of
24 the exhibits.

25 The hearing will be conducted in an informal

1 manner. The contractor will elaborate on their claim,
2 and then DOT will offer rebuttal.

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

7 It will be appropriate at this point for the
8 contractor to proceed with presenting his claim. One
9 thing the Board does like to have at the very beginning
10 is a verification from the contractor as to the exact
11 amount of his claim in dollars.

12 MR. DUANE GAMM: The exact amount of our claim
13 for claim number 1 is \$26,251.82. Claim number 2 in
14 the amount of \$16,289.30. Claim number 3 is \$2,700.

15 Then interest on that, I think we computed
16 interest at 12 percent through the 15th of this month,
17 \$4,743.52.

18 I would also have to wonder whether we are
19 entitled to recovery, if we prevail, of our costs
20 associated with this proceeding or not.

21 CHAIRMAN COWGER: No. What does that total out
22 to?

23 MR. DUANE GAMM: \$49,984.64.

24 CHAIRMAN COWGER: Thank you.

25 MR. DUANE GAMM: To go along with our --

2
1 I suppose due to the discussion we just had about the
2 documents, I think we would have to establish what the
3 precedence of documents would be. Now we assumed that
4 the precedence of documents would be as they are in the
5 Standard Road and Bridge Specifications.

6 I suppose the DOT has pointed out that they are
7 not a part of this contract. If they are not a part of
8 the contract, then I think you would have to go back to
9 what the industry standards would be, in that the
10 specifications govern over the plans.

11 I don't know how critical that really is to
12 what --

13 MS. PICCIRILLI: May I ask a question?

14 CHAIRMAN COWGER: Wait a minute. Let him -- is
15 that the end of that statement?

16 MR. DUANE GAMM: That's basically it.

17 CHAIRMAN COWGER: I think it would be appropriate
18 to let DOT comment back on that.

19 MS. PICCIRILLI: When you said the
20 specifications, typically the specifications are
21 provided in the numerous sections -- general, project
22 detail, supplemental, special provisions, supplements
23 to special provisions. When you said specifications,
24 what is the governing order?

25 MR. DUANE GAMM: Well, we presumed that we would

1 be using the standard DOT specifications, which would
2 allow that the special provisions come first and then
3 the technical special provisions under plans, then the
4 road design structures and traffic operations
5 standards, then the developmental specifications,
6 then supplemental specifications, then the standard
7 specifications. That would be the order of the
8 precedence of the documents.

9 CHAIRMAN COWGER: What is your position?

10 MR. DUANE GAMB: Our position would be this is a
11 DOT contract, this would be the way they would normally
12 work. That's what we normally expect, rather than just
13 saying that the specifications -- if you take the
14 package that comes with it, it doesn't discuss it in
15 quite these terms, but then you have supplements in the
16 back of that specification to the special provisions.
17 So you have to assume that the front of that
18 specification must be the special provisions.

19 CHAIRMAN COWGER: What you're saying is that your
20 position is that the plans are first in order --

21 MR. DUANE GAMB: I would say the special
22 provisions come first and then -- which are the front
23 part of this document here, and then it contains
24 technical special provisions.

25 CHAIRMAN COWGER: Okay.

1 MR. DUANE GAMM: In the back of this here. And,
2 let's see, where is that --

3 MR. MOREFIELD: Here is the standard.

4 CHAIRMAN COWGER: I just misunderstood what he
5 was saying.

6 MR. DUANE GAMM: I guess one of them is in the
7 back for traffic control plans, says supplement to the
8 special provisions. That's got to be a supplement to
9 the special provisions that are in the front of this
10 particular specification, although I think it calls
11 this specification, the front of this --

12 CHAIRMAN COWGER: What your position is is that
13 the specifications that were included in the bid
14 package should be treated as special provisions --

15 MR. DUANE GAMM: The first portion --

16 CHAIRMAN COWGER: -- and therefore they take
17 precedence?

18 MR. DUANE GAMM: The first portion is special
19 provisions, then you have technical specifications
20 behind that.

21 CHAIRMAN COWGER: Then the plans fall last in
22 order of precedence is your position?

23 MR. DUANE GAMM: That's correct.

24 CHAIRMAN COWGER: DOT, am I correct in saying
25 that if you accept the fact that the standard

1 specifications don't apply to this contract, then
2 there's no mention in the contract of precedence of
3 contract documents? I can't find anything --

4 MS. PICCIRILLI: There is no precedence.

5 MR. HARVEY: Could I mention one thing. This
6 part about the general district contract
7 specifications, that is more or less the specification
8 book is what we've held it to on many contracts.

9 MS. PICCIRILLI: Basically their contract, and
10 you will see, was divided into four sections. It was
11 divided into a general specification, a project detail
12 specification, and then supplements.

13 I think one of the misunderstandings that the
14 contractor has is it says supplement to special
15 provisions, means a supplement has got to be a revision
16 to a special provision, which isn't true, because a
17 supplement is either a revision or an addition to a
18 contract, not just a revision.

19 That's in the definition in the Blue Book, and
20 that's industry standard. It's not always just a
21 revision. It's sometimes an addition that comes after
22 the special provisions package comes out. Then they
23 have a supplement to the special provisions which could
24 possibly be an addition versus a revision.

25 CHAIRMAN COWGER: I think we have heard enough on

1 that particular subject. Let's go on now. The Board
2 can make a decision on that at some point.

3 MR. DUANE GAMB: Our claim number 1, I guess
4 maybe starting with the story, the job was bid in
5 March. We were the low bidder by \$10,000 or \$15,000 on
6 a \$100,000 contract.

7 In June a preconstruction meeting was held. At
8 that preconstruction meeting the DOT advised us that
9 they had decided, based on a site visit two days
10 earlier, that the work needed to be done at night.
11 That's contained in -- you will find this as I go
12 through this in more detail, in the minutes of that
13 meeting.

14 It come as a surprise to us because we had not
15 interpreted it that way based on the contract
16 documents. Then a delay occurred that lasted about 35
17 days while the DOT researched whether the work had to
18 be done in the daytime -- or it had to be done at night
19 or could be done in the daytime.

20 In early July then they advised us that we could
21 work in daylight hours between the hours of, I suppose,
22 6:30 or daylight until, from a practical standpoint,
23 daylight until 2:30 in the afternoon, which we had to
24 open up the road and do it with a lane closure.

25 That's basically what generated the claims.

1 One was a delay claim for the period of time in
2 us being able to start. We were available and planned
3 to start right at the notice to proceed. Not having a
4 lot of work on hand, we were available to work.

5 The second part of our claim, claim number 2
6 deals with the extra costs associated with doing the
7 job with the lane closure and using flagmen and so
8 forth, and the reduced work hours. We were reduced to
9 working seven hours a day.

10 Now to go through our claim number 1, we had --
11 I don't know how much detail we need to go into. If
12 it's too much detail, you just advise and I will try to
13 hold it down.

14 The preconstruction meeting was held June 5, and
15 I think we received the notice to proceed just a couple
16 of days after that order. I don't recall exactly.
17 I guess that was June 7. I have delay of start was on
18 June 7.

19 We went -- it took until, let's see if you follow
20 through the correspondence here, on July 10 the DOT
21 sent us a letter which we received on the 16th that
22 allowed us to work in the daytime from basically, as
23 I stated, seven o'clock until 2:30 in the afternoon.

24 We had physically started then. We started work
25 on July 13. Our contract time started -- they started

1 charging us contract time on July 8. That's basically
2 what -- that's the delay period.

3 Now if I can find our claim here. On
4 September 15 we worked up our claim and -- let's see,
5 what we did there, we worked out what our
6 administrative costs were. We arrived at \$116 a day it
7 cost us to administer this, and we had a 36-day delay,
8 and that come to the 4,194.

9 Have you found our letter of July 15 following
10 that?

11 Then we had, during that period of time we had
12 our equipment that was available to go start the job,
13 and that is the equipment we used on the job. And we
14 used the rates there from the Associated Equipment
15 Distributors' Guide, if you are familiar with that.
16 That's how we established those rates.

17 And following in this, there's the copy of the --
18 what we used for rates. I think we can find those easy
19 enough to look at them.

20 That amounted to \$530 a day for 36 days, which
21 was \$19,051.

22 The summary of it, our general administration was
23 4,194, our idle equipment, 1,951. We added a 10
24 percent profit, and our bond cost was \$682, for a total
25 of 26,251. Basically that's end of our claim number 1,

1 which was the delay claim portion. Basically the same
2 argument.

3 Now I suppose to get into what our feelings were
4 of how we interpreted this, if you go to our June 26
5 letter -- I should have started with this June 26
6 letter, really.

7 What we have here is a letter breaking down our
8 position of what -- why we have a claim. Just reading
9 from that, page 8 of the special provisions package,
10 paragraph 5.7 entitled work schedule speeds.

11 "In general, all work shall be performed during
12 daylight hours. For special operations, night work
13 may be allowed if so authorized in the project
14 specifications or by written approval of the project
15 engineer."

16 Sheet number 8 of the contract plans states that,
17 "Two-way, two-lane traffic shall be maintained between
18 the hours of 6:30 a.m. and 8:00 p.m. on the existing
19 pavement, minimum lane width shall be 12 feet."

20 That allows the work -- the first reference tells
21 us we have to do all the work in daylight hours, the
22 second one says that the traffic will have to be
23 maintained on the existing two-lane pavement, with two
24 lanes of traffic.

25 So there's no detours or widening or anything of

1 that nature to run traffic, we are going to do it on
2 the existing pavement.

3 One-way operations, the next -- third item,
4 page 24 of the special provisions package, page 2.2,
5 "The contractor may be allowed to restrict traffic to
6 one-way operations for short periods of time."

7 Our interpretation of that was that if we needed
8 to block or close a lane, for instance, to get concrete
9 trucks in or for whatever reason, that we could do
10 that for short periods of time. It could even be
11 interpreted to mean that the asphalt work could be done
12 in the daytime with a lane closure being one day at a
13 time, being a short period of time. That was somewhat
14 of a question in our mind.

15 The people that were doing our asphalt work, they
16 didn't have a problem doing the work at night if they
17 were required. That never became part of this claim.

18 Sheet 8 of the contract plans, under paragraph 3,
19 sequence of construction, states "Apply all overbuilt
20 course and friction course, maintain traffic in
21 accordance with index number 604 during these
22 operations."

23 Now what the other two items above that -- in
24 fact we have right behind that reference to all of
25 these things. I have marked plan sheet 8, it shows

1 general notes.

2 The first two deal with the widening on each side
3 of the road, and they don't tell us to use 604. It
4 would have been real easy, if they wanted a lane
5 closure, to do this with a lane closure, to say all
6 work will be done under 604 rather than restrict a
7 statement saying just the asphalt work will be done
8 using index 604.

9 Do you see what I'm talking about?

10 MR. ROEBUCK: What about 604?

11 MR. DUANE GAMM: 604 is for --

12 CHAIRMAN COWGER: Excuse me just a minute, Jack.
13 Look in this blue book under the TCP tab. It's the
14 second page. That is index 604.

15 MR. ROEBUCK: Okay. I see it.

16 CHAIRMAN COWGER: Excuse me, but I think we
17 needed to get him on the right page before you went on.

18 MR. DUANE GAMM: 604 is what we were supposed to
19 use. There was no misunderstanding that 604 had to be
20 used for the asphalt work. There's no reference to
21 what you had to use for the other work. They didn't
22 specify an index.

23 If you take -- and if you -- the specifications,
24 however you interpret them, whether -- where precedence
25 lies, they tell us all the work has to be done in the

1 daytime, you have to maintain the work, have to
2 maintain two lanes, two directions on the existing
3 12-foot pavement. That doesn't allow that you can use
4 index 604 for the maintenance of traffic.

5 We had interpreted that to mean that the only
6 other index for traffic maintenance that we are aware
7 of is 605, which would allow that you can take and work
8 adjacent to the road -- and it calls it removing
9 operations, that it's the only one that will apply that
10 you could reasonably use or interpret that you could
11 use to maintain traffic to perform this contract.

12 That's what we assumed would be used. It's also
13 our understanding that's what other contractors
14 interpreted would be the case.

15 CHAIRMAN COWGER: May I interrupt and clarify to
16 make sure I understand. What you're saying is that
17 your interpretation of the contract is that index 605
18 could be used for maintaining traffic while you were
19 working adjacent to the existing pavement?

20 MR. DUANE GAMM: That's correct.

21 CHAIRMAN COWGER: That would be your widening,
22 shoulder paving operations, et cetera?

23 MR. DUANE GAMM: That's correct. That's the
24 only one that would be available that would come close
25 to fitting the other requirements of the specification.

1 CHAIRMAN COWGER: Have you completed -- no, you
2 have not. Excuse me.

3 MR. DUANE GAMM: I have about completed. I don't
4 know if you people have read the rest of this letter.
5 There's nowhere in the special provisions package that
6 it states there are any special operations on this
7 project. That's under some of our assumptions.

8 During construction sequence 1 and 2 will use
9 signage -- the signage as shown on traffic control
10 plans, sheet 3 of contract plans and barricades that
11 are provided on page 94 of the special provisions.
12 I don't see what that has to do with this at this
13 point.

14 One other -- I don't know if it's worth
15 mentioning now or not, basically at the preconstruction
16 meeting, and I wasn't there, but Steve advised me that
17 our -- they led us to believe that our traffic control
18 plan and our other plans were approved at that time.
19 Later they come back -- that was a verbal. That's in
20 the --

21 MS. PICCIRILLI: I happen to have a tape of the
22 preconstruction meeting.

23 MR. DUANE GAMM: Later they decided they weren't
24 approved. That's what I think generated a good bit of
25 this letter here. That's basically what our claim is

1 about, our claim number 1, why our -- that's really the
2 basis of our claim.

3 CHAIRMAN COWGER: Could we interrupt you a
4 minute. I think what you have got at this point,
5 you've kind of set up the situation. The things that
6 you have described in this June 26, 1992 letter are
7 really the background for all of your claims?

8 MR. DUANE GAMM: That's correct. It's really
9 one issue and it's generated into a delay claim and an
10 extra cost.

11 CHAIRMAN COWGER: I think it would be appropriate
12 at this point for us to let DOT come back now and give
13 their position on this. I think we should be guided by
14 this June 26 letter. If we let DOT come back and
15 address possibly point by point their rebuttal to the
16 letter, then we can move on from there.

17 MR. DUANE GAMM: Sounds appropriate.

18 MS. PICCIRILLI: That's exactly what I was going
19 to bring up in this summary of the claims. As you can
20 see, the three claims are all associated with the
21 misunderstanding, misinterpretation, whatever you want
22 to call it, of the traffic control plans and what was
23 required on this project.

24 And as you can see, that is in that summary.
25 I think one of the basis -- the basis of the claim,

1 like I said, was the traffic control plan.

2 I also think the other situation was maybe this
3 particular contractor's minimum involvement with the
4 DOT and possibly the way we do things, you know, how
5 DOT projects are run, how we do our maintenance of
6 traffic, how strict we are on our maintenance of
7 traffic. I think the contract documents are the
8 governing order, the contract documents.

9 Obviously in the district, even out of
10 Tallahassee, when we do contracts, we try to minimize
11 inconveniences, impacts to the public, traffic
12 obstructions, safety, that type of thing.

13 So a statement that was made that we had to
14 research whether or not the work needed to be done at
15 night is not a correct statement. I mean we knew from
16 day one there was no possible way this job could be
17 done during the day.

18 It's pretty evident due to the fact that if you
19 look at the map for the location of the project, this
20 is on U.S. 41 through north Hillsborough County.

21 This is like the major truck route link between
22 central Hillsborough County, central Pasco, and
23 central Hernando County. The other major truck route
24 is 75, which is much further east and 19, which is
25 much further west. This has got a lot of truck

1 traffic.

2 The other problem is it's also a major railroad
3 route. The other thing was the whole reason we did
4 this project was to do a lane widening for an
5 elementary school that had gone in.

6 You can see on the plans. I have a little blue
7 dot where the elementary school was built. The
8 elementary school was built about two or three years
9 ago.

10 Because of the left-turn movements going into the
11 elementary school, 41 and Hanna are the only two-ways
12 to get to the elementary school.

13 That's the reason this project was done was to
14 construct a left-turn lane to the elementary school for
15 those left-turn movements because we were backing
16 traffic up for people turning left into the elementary
17 school.

18 At that point we knew we needed to do something.
19 There was like no way we could do it during the day.

20 As you saw from the typical section that Gene
21 brought up, all this work was right adjacent to the
22 existing roadway. There was -- the only work that
23 wasn't adjacent was probably the drainage structures
24 which you have on the second page, your plan
25 elevations, the box culvert extension that we did,

1 things like that.

2 Typically all the roadwork widening and
3 resurfacing was basically adjacent to travel lanes.
4 Obviously, according to 604, we could come within two
5 feet of the travel lane without closing the lane, for
6 safety reasons.

7 Now we can step through the contract, which is
8 the next thing you have in your packet. I think
9 regarding the June 26 letter, I have a problem with the
10 number 1 where the contractor makes a statement that --
11 page 8 of the special provisions.

12 I think we are back to the original statement.
13 This contract, the contractor is calling the whole
14 package the special provisions. For district and mini
15 contracts, this is the contract, not the special
16 provisions.

17 Typical DOT projects, typically your special
18 provisions are contained in this package because these
19 are your general specifications. Since we don't use
20 general specifications on district and mini contracts,
21 this is your contract.

22 This contract consists of the bid blank and
23 everything else. It also consists of four parts:
24 general specifications, project detail specifications,
25 supplemental specifications, special provisions and the

1 the supplement to the special provisions.

2 There are four sections contained in this
3 contract, which you don't usually see in the typical
4 state-wide DOT contract. This is the contract, not the
5 special provisions.

6 I think the first statement he made of page 8 of
7 the special provisions is an incorrect statement. The
8 statement he made regarding in general all work shall
9 be performed during daylight hours is page 8 of the
10 general specifications, which you will see in your
11 first tab.

12 CHAIRMAN COWGER: May I interrupt you just a
13 minute. I want to establish something here, and that
14 is the fact that there is no mention in the general
15 district contract specifications of coordination of
16 documents, right?

17 MS. PICCIRILLI: Correct. So we have to
18 basically base that on industry standards.

19 CHAIRMAN COWGER: We understand your arguments on
20 that. I think we can move on.

21 MS. PICCIRILLI: I was going to go through his
22 letter.

23 MR. ROEBUCK: How do you rationalize --

24 CHAIRMAN COWGER: We don't need to discuss
25 coordination of documents anymore.

1 MR. MOREFIELD: Let her finish before we ask
2 questions. She just got through the general specs.
3 Now she's going to go to what applies to this specific
4 project.

5 MR. ROEBUCK: I heard her say the special
6 provisions are the general conditions. They are the
7 contract documents.

8 MS. PICCIRILLI: No, this is not a special
9 provision, this is the contract.

10 MR. ROEBUCK: Forget that word, whatever we are
11 reading, such as "In general all work shall be
12 performed in daylight hours." That's basic.

13 MS. PICCIRILLI: Those are the general district
14 contract specifications.

15 MR. MOREFIELD: Just like this (indicating).

16 MS. PICCIRILLI: Exactly. That statement is
17 taken verbatim out of the Blue Book under general
18 requirements. If you look in the Blue Book, under
19 general requirements, that statement is verbatim out of
20 here.

21 What I'm saying is hopefully the jobs we did
22 under the '86 spec, we didn't do them all during the
23 day. That statement is taken verbatim out of this Blue
24 Book.

25 MR. ROEBUCK: When we went to a lot of night work

1 they had special provisions for that.

2 MS. PICCIRILLI: We are going to get to that.

3 CHAIRMAN COWGER: We are going next now to the
4 project detail specifications?

5 MS. PICCIRILLI: Correct. The general
6 specifications are basically the same -- those sheets
7 of paper are basically the same as either the Blue or
8 the Gray Book.

9 CHAIRMAN COWGER: We understand that.

10 MS. PICCIRILLI: The next thing we go to is the
11 project detail specifications, the second tab that you
12 have. I have the whole contract.

13 I took the pages that are relevant out of
14 context, but I have the whole contract if you want to
15 see it. In there we are getting into more detail. Now
16 we are talking about the project specifications.

17 We talk about how we are going to use that --
18 under section 2-2, which is page 24, we talk about
19 the number of lanes need to be -- "Except as otherwise
20 specified herein, on the plans, or in the special
21 provisions, the contractor shall maintain two lanes of
22 traffic in each direction."

23 That was mandatory. That's in the project detail
24 specifications. So now we have overridden this by
25 basically saying that we need to maintain two lanes

1 of traffic at all times. This is the document that
2 supersedes the general specification.

3 Then we also refer to things like the MUTCD and
4 all of that kind of stuff, which we didn't refer to
5 that in the general specifications, because now we are
6 back -- into project specific -- so we are referring to
7 using the MUTCD and things such as that.

8 Then the next thing we go to is the --

9 MR. ROEBUCK: You lost me there for a minute on
10 what you read. The last thing you read. I'm looking
11 at a page 24 here, which says, "Contractor shall
12 maintain one lane of traffic."

13 MS. PICCIRILLI: In both directions.

14 MR. ROEBUCK: Two lanes.

15 MS. PICCIRILLI: These are some pictures of
16 this project. This is a two-lane undivided highway for
17 U.S. 41.

18 MR. DUANE GAMB: If you are going to maintain
19 traffic in each direction, further on it tells us that
20 it has to be on the existing pavement, how do you get
21 to the point of going to --

22 MS. PICCIRILLI: That goes into special
23 provisions. Now we are going through general --

24 MR. DUANE GAMB: I thought we didn't have a
25 precedence of documents and now we do have a precedence

1 of documents.

2 MS. PICCIRILLI: You stated one is not stated but
3 we are going to use industry accepted practice.

4 MR. DUANE GAMM: Industry would mean this is a
5 specification, it's all specification.

6 CHAIRMAN COWGER: I don't think we need to argue
7 that point any more. The Board will sit and consider
8 the matter of precedent of documents. Let's stay with
9 the documents now.

10 MS. PICCIRILLI: Now we have gone to the project
11 detail. The project detail says we need to maintain
12 one lane of traffic in both directions. This is like
13 I said a two-lane undivided highway.

14 The next section we have is the special
15 provisions. Basically we have those, refers to
16 maintenance of traffic, a supplement to the special
17 provisions. That is page 76. That should be your next
18 tab. You go from project detail to your special
19 provisions.

20 Once again in there we talk about general things,
21 but then the very last paragraph, which you should have
22 highlighted in yellow, basically says, "All operations
23 shall be performed in accordance with the Department's
24 District 7 lane closure guides."

25 That is a program that we use throughout our

1 district to determine average daily traffic and lane
2 closures. I have copies of all of those in your
3 handout.

4 So now we have gone from general to project
5 detail to special provisions is what we have done. So
6 now we have three sections of the contract. One
7 supersedes the other typically. Special provisions
8 supersede general contracts.

9 So now we have gone to saying that we need to be
10 in accordance with the lane closure guides.

11 Then finally the last thing you have in your tab
12 is your traffic control plan. These are in the plans,
13 in the documents. So now we have gotten four different
14 sections of basically this contract, which is typical
15 of most contracts. It's the next page.

16 Now this was part of your contract plans. In
17 your contract plans under general note 1, basically it
18 says, "The proposed traffic conforms to the MUTCD and
19 the standards and that the contractor's attention is
20 directed to the standard index 600 and 604 for
21 reference to the proposed traffic plan."

22 Like we discussed, 604 is any time you have an
23 active work zone within two feet of the travel
24 pavement. You need to use 604.

25 All right. Then your attention is called to note

1 3, which says, "Two-way, two-lane traffic shall be
2 maintained during the hours of 6:30 a.m. and eight
3 o'clock p.m. on the existing pavement, minimum lane
4 width shall be 12 feet."

5 That's where you go from, how do you do this work
6 if I have to use 604 to how you do the work. You do
7 the work between 6:00 p.m. at night and 6:30 a.m. in
8 the morning. Okay. That's the only feasible way you
9 can do that. That is based on our lane closure
10 calculations.

11 Like I said, you will see those lane closure
12 calculations in just a minute.

13 It explicitly states in the plans that you can't
14 close lanes of traffic between 6:30 a.m. and eight
15 o'clock p.m. on this project. It can't be done. The
16 statement that was made that it took us 36 days to
17 research whether or not we could do the work at night.

18 I mean it's right there it says the work will be
19 done at night because you can't close the lanes between
20 6:30 a.m. and eight o'clock p.m. It says it right
21 there, you have to maintain two lanes of traffic.

22 MR. DUANE GAMM: Could I interrupt you at this
23 point. On this sheet over under sequence of
24 construction, it tells you for the widening,
25 construct -- number 1, "Construct all widening and

1 pavement shoulders on the left side of State Road 45
2 including the return at Duval Road and guardrail."

3 That's sequence number 1. It doesn't say
4 anything about which index to use.

5 MS. PICCIRILLI: It refers you to the general
6 note 1, that your attention is called to those.

7 MR. DUANE GAMM: It doesn't there under sequence.
8 The point I'm getting to, the second one is for the
9 work on the other side of the road. It again doesn't
10 tell you to use any specific index.

11 MS. PICCIRILLI: We discussed --

12 MR. DUANE GAMM: You come down to 3 of that
13 sequence it says, "Apply all overbuilt course and
14 friction course, maintain traffic in accordance with
15 index number 604 during these operations."

16 If they mean for all work to be done under 604,
17 it should say for all work under 604 and leave out for
18 the asphaltwork. Or use it with the other sequences
19 and save 604. It's real simple to do.

20 MS. PICCIRILLI: My question is are we discussing
21 the traffic control plan or the sequence of
22 construction?

23 MR. DUANE GAMM: Both.

24 MS. PICCIRILLI: I think we are discussing the
25 traffic control plan.

1 MR. DRIGGERS: Also you have referenced index
2 600, which also covers clear zones, drop-offs, things
3 of that nature. Let's not forget index 600, which is
4 Bible.

5 CHAIRMAN COWGER: We don't have index 600 in
6 front of us, but it is the index that deals with
7 offsets?

8 MS. PICCIRILLI: Correct. That's the ten pages
9 of all the general notes.

10 MR. DRIGGERS: Drove off criteria, clear recovery
11 area and so forth.

12 MS. PICCIRILLI: It's like ten pages --

13 MR. HARVEY: Also in the supplemental to the
14 special provisions she went over previously, it says to
15 use the appropriate index for the operations at hand.
16 If you look at the operations being done, that would
17 apply to index 604.

18 MS. PICCIRILLI: That does state that in the
19 special provisions, that you need to use the --
20 applicable in there. So if you're within two feet of
21 the travel lane you need to use 604.

22 The other thing that was made, first of all, you
23 will never see 605 referenced anywhere. 605, if you
24 look at 605, it is for typically an intermittent or a
25 moving operation. We don't consider limerock and

1 asphalt a moving operation, especially when it's over a
2 12-foot lane. That's not a moving operation.

3 So, 605, the only time we really felt like 605
4 would apply is, say, for example, you are backing in
5 and out concrete trucks to pour culvert extensions
6 where we had intermittently stopped traffic to pull
7 trucks in and things such as that. Typically
8 intermittent closures is not one day.

9 I mean we are usually talking -- typically in our
10 district we try not to delay the public more than five
11 minutes. If the public is being delayed more than five
12 minutes, we need to do something without maintenance of
13 traffic.

14 Anyway, so basically it explicitly states in our
15 opinion under the traffic control plan that you will
16 not close the lanes between 6:30 a.m. and 8:00 p.m.

17 As for the preconstruction conference, this issue
18 was never brought up at the preconstruction conference.
19 The MOT plan was never approved. I have the tape. It
20 was never approved.

21 As a matter of fact, when the contractor
22 submitted 604 and 605 as his traffic control plan,
23 which I think you have, we basically said no, you don't
24 use 605 except for operations such as concrete trucks
25 coming in or temporary closures.

1 I've got the tape right here. It's about four
2 minutes of tape if you would like to listen to it.
3 We never approved it. As a matter of fact -- well,
4 I won't go into that.

5 Let me -- for those of you who are not familiar
6 with our lane closure restrictions, I think the next
7 sheet you have is something that looks like this, after
8 the 604 index. This is the program that we use in our
9 district that now is being --

10 MR. DRIGGERS: Statewide.

11 MS. PICCIRILLI: That is statewide application
12 that we made in our district. We go through ADTs, all
13 of that thing, do traffic counts. Based on the traffic
14 counts we input into the computer the type of work we
15 are going to do.

16 It pulls out a chart like the one at the bottom.
17 What this does is show you the off peak and the peak
18 hours of traffic. This is how we determined our lane
19 closure calculations in our contract. That's where the
20 6:30 to eight o'clock closure restrictions came into
21 play.

22 If you look here, anything above the line are
23 peak hours. That means we can't close the lane during
24 those hours based on the ADTs. You can see that says
25 it's from 6:30 to 8:00. That's what we base this

1 entire plan on, was this lane closure calculation.

2 You know, everything here, all this criteria is
3 basically what we came up with. We can't work within
4 two feet of the travel lane, things such as that.

5 Then the other thing, when Edisto brought this to
6 our attention, we really didn't bid this for night
7 work, there was a misunderstanding. Whatever the
8 situation was, we had a meeting, numerous meetings on
9 those. We had a meeting.

10 I basically said, well, it just so happens this
11 contract worked out to be during the summer. And the
12 whole reason for this job was for this elementary
13 school. And these ADTs here were based on April ADTs.
14 I think they were April, if I'm not mistaken, Keith?

15 MR. DRIGGERS: That's correct.

16 MS. PICCIRILLI: Which had the school movement,
17 school traffic. I asked our maintenance of traffic
18 engineer to see if we could revise these lane closure
19 calculations and take out the school movements, see if
20 we could do something to help with this because
21 obviously this is based on school movements.

22 That's exactly what we did. At that point we
23 said let's see what we can do. They basically did a
24 reduction in the traffic based on their knowledge of
25 the school movement. It came up with two options that

1 we submitted to the contractor.

2 If you want the truth, we really didn't have to
3 do it. We did it because it was summertime, you can
4 probably do some work during the day this way, things
5 such as that.

6 So we came up with two criteria that we submitted
7 to the contractor basically saying that if you maintain
8 a 12-foot travel lane with the reduction of the school
9 movements, your hours could be between 6:30 a.m. and
10 6:30 p.m.

11 So now we have reduced it from 8:00 p.m. to 6:30
12 p.m. So now we give them a little earlier time to
13 start.

14 The second criteria we gave him is if you give us
15 a 12-foot travel lane plus six extra feet before you
16 put down your barricades, which creates like an 18-foot
17 travel lane, people have a tendency not to slow down as
18 much, a tendency to go through it because it's not as
19 cramped, that you could probably, based on the ADTs,
20 and that's exactly the same graph, that you could work
21 between the hours of 2:30 and 6:00.

22 So now -- I really think the State, you know,
23 went above and beyond what we needed to do. All we
24 asked is that you maintain an 18-foot area for traffic
25 to go through and now your restricted areas are between

1 2:30 and 6:00.

2 If you see the cover letter for those two lane
3 closure calculations, which is right before those two,
4 it explicitly states that you need to have this job
5 done before August, the end of August, before school
6 starts, because if you don't have it done before school
7 starts, then we can't let you have these different
8 restrictions. We have to go back to the 8:00 to 6:30
9 restrictions. It explicitly states that there.

10 The whole reason we did this is based on the time
11 of year and the fact there was no school in session.

12 We did that basically in the spirit of
13 cooperation to try to help out, maybe lengthen his
14 hours that he could work.

15 One other statement that he made that I had a
16 real problem with. It took us 35 days to research it
17 and the MOT was not approved, that's not true. We had
18 a precon on the 5th, there was a meeting on the 9th.
19 Frank was there, Tony was there.

20 On the meeting on the 9th we told them there's no
21 way you can use a 605 index to do stabilization in the
22 limerock and the asphalt. This can't be done. You are
23 too close to the travel lane. It goes against our 604
24 standard.

25 MR. DRIGGERS: And 600.

1 MS. PICCIRILLI: And 600. We sent them a letter
2 on June 16. Keep going through, past the part about
3 passing lanes. The next piece of paper basically that
4 is in the package is how Edisto wrote us a letter
5 saying that a 48-hour turnaround time was an acceptable
6 turnaround time for maintenance of traffic. DOT
7 I don't think does anything in 48 hours.

8 The next thing, the next letter is a June 16
9 letter basically saying your maintenance of traffic
10 plan isn't approved because you can't use 605. And
11 that was nine days after -- well, 11 days after he
12 submitted that.

13 And they even further expounded on that in the
14 June 17 letter explaining exactly why we didn't approve
15 it, that you can't close the lanes, that you have to
16 use 604, things like that.

17 And then the contractor sent us a letter on
18 June 19 stating that he was going to use page 8 of the
19 contract documents for maintenance of traffic.

20 At that point on June 25, which is a letter you
21 have in there, we approved his maintenance of traffic
22 saying if you're going to use page 8 which states you
23 have lane closure restrictions, that you are going to
24 use index 600 and 604, your maintenance of traffic is
25 approved.

1 He had an approved letter in his hands on
2 June 25. The reason it took until the 25th is he
3 insisted he was going to use 605. We said you can't
4 use 605 to do these operations, it can't be done.

5 I guess that's where we're coming from. We feel
6 it was explicitly stated in the plans that you will
7 maintain two ways of traffic between 6:30 a.m. and
8 eight o'clock p.m. That was in the contract documents
9 that he bid on.

10 We couldn't have put it any plainer than that,
11 personally.

12 MR. DUANE GAMM: I think so.

13 CHAIRMAN COWGER: Let me -- are you at a point
14 that it would be appropriate to interrupt you?

15 MS. PICCIRILLI: Yes.

16 MR. PROCH: Could I just reiterate that the
17 typical section shows you have got to put your base
18 widener in. That could not be done with the moving
19 operations under index 605.

20 CHAIRMAN COWGER: I think we understand that.
21 The 605 index applies to a moving operation, and base
22 widening is not a moving operation.

23 MS. PICCIRILLI: Keith, Tony, do you all have
24 anything to add?

25 MR. DRIGGERS: Generally that we referenced index

1 600. And anyone who is MOT certified, which is
2 required, which has been to ASTO training, understands
3 that the 600 series for the State of Florida is the
4 gospel for MOT, and those things have to be adhered to,
5 which covers drop-off criteria and clear zones.

6 CHAIRMAN COWGER: Let me make sure I understand
7 something. Looking at the DOT exhibit just a minute,
8 there are a couple of calculation sheets in here called
9 24-hour traffic variations. There are two of them
10 there dated July 6, 1992. Both of those were created
11 based on the assumption that it was going to be
12 summertime, no school traffic through here?

13 MS. PICCIRILLI: Right. The DOT --

14 CHAIRMAN COWGER: The difference between the two,
15 the little chart at the bottom, has to do with how
16 close the barricade that you have shown here is to the
17 edge of the travel way?

18 MS. PICCIRILLI: Correct, correct.

19 CHAIRMAN COWGER: What that amounts to is when
20 the barricade comes over closer, it kind of restricts
21 the traffic situation.

22 MS. PICCIRILLI: People have a tendency to slow
23 down.

24 CHAIRMAN COWGER: The capacity is reduced by
25 moving that barricade closer.

1 MR. DRIGGERS: This is the plans preparation
2 manual where this point comes from. It's statewide,
3 used on all of our projects.

4 MS. PICCIRILLI: We made those modifications
5 based on the fact that school was out. If this
6 contract had been in November, December, January or any
7 other nine months out of the year, we couldn't have
8 made those modifications.

9 CHAIRMAN COWGER: I think we understand that.
10 A couple of pieces of DOT testimony I want to ask
11 questions about, and hopefully we can move this along.

12 In the supplement to the special provisions,
13 going back to the precedent argument a minute ago for
14 just a second, supplement to the special provisions,
15 page 76, where are the special provisions that you are
16 supplementing?

17 MS. PICCIRILLI: Like I said, according to the
18 definition in the books, the supplement to the special
19 provisions, all it is is a revision or an addition to
20 the general specifications. And it's in the Gray Book,
21 the Blue Book, the definition of a supplemental --

22 CHAIRMAN COWGER: But it's already been
23 established that none of this applies to this contract?

24 MS. PICCIRILLI: Industry standards applies.

25 CHAIRMAN COWGER: On this same page you say, "All

1 operations shall be performed in accordance with the
2 Department's District 7 lane closure guide."

3 MS. PICCIRILLI: Which is those calculation
4 sheets you saw.

5 CHAIRMAN COWGER: Is that information made
6 available to the contractor at the time he bids the
7 contract?

8 MS. PICCIRILLI: That's what comes in the note
9 and the plans. The lane closure --

10 MR. ROEBUCK: You don't give him the
11 information --

12 MR. PROCH: It goes back to the general
13 specifications. We did not give it by specific spec.
14 It is made available to him.

15 MS. PICCIRILLI: The lane closure guides are the
16 lane restrictions stated in the plans.

17 CHAIRMAN COWGER: I guess the question I have is
18 with all of this analysis that was apparently done in
19 the design phase of the project, why is there no
20 mention anywhere directly that says you have to work at
21 night?

22 MS. PICCIRILLI: It says you can't work during
23 the day.

24 CHAIRMAN COWGER: That's an inference. Where did
25 you say -- DOT, you made all of this analysis of this

1 thing. You are saying up front you realized at the
2 time you designed this project that work would have to
3 be done at night. Why is there no mention of that
4 anywhere in the contract that he had to work at night?

5 MS. PICCIRILLI: He can do some of the work
6 during the day. He could have done his box culvert
7 extension, his drainage structures. There was work to
8 be performed during the day. It was a day-night
9 operation.

10 Even in the preconstruction we even made
11 statements that, well, you could be working on your box
12 culvert on one side of the road during the day and you
13 could be working on your widening during the night. It
14 wasn't that you had to do everything at night.

15 MR. MOREFIELD: The only thing, the lane closure
16 was the key. If you had to close a lane between those
17 hours, you couldn't. Whatever that work was going to
18 be done because of that lane closure had to be done
19 before 6:30 or after 8:00.

20 MR. DUANE GAMM: But then you go back to our
21 specification that tells us we can only work during the
22 daytime.

23 MR. MOREFIELD: That gets back to the order of
24 things.

25 MR. DUANE GAMM: We could say just in general all

1 the work will be done at night.

2 MR. ROEBUCK: In the contractor's exhibit,
3 I think it's the typing of the preconstruction meeting,
4 Steve Gamm made a statement, "I didn't think there was
5 much night work in it. Tony Harvey: I didn't either
6 when I looked at it. But the way it looks out there --
7 I went out there yesterday -- there is no way to get
8 around that. That traffic is something else." Do you
9 recall that?

10 MR. HARVEY: I think the best way to explain that
11 is to play that section of the tape. Then there won't
12 be any question on it.

13 MS. PICCIRILLI: That's taken out of context.
14 They had been discussing for three minutes how they
15 need to do this work at night. Tony said -- he knew
16 the work needed to be done at night. He was amazed
17 when he went out there, the kind of traffic. He even
18 makes a statement afterwards, "I'm not even sure at
19 night it's going to be that great because there's so
20 much traffic out there."

21 MR. HARVEY: That's exactly the way it went.

22 MS. PICCIRILLI: He made the statement, which
23 isn't in there, I'm not even sure at night we're not
24 going to delay traffic. There was so much traffic out
25 there.

1 MR. ROEBUCK: He said even at night --

2 MS. PICCIRILLI: When he actually physically went
3 out there and saw the type of traffic out there, he
4 said this may not even be a good situation at night
5 when we close these lanes. That's where he was coming
6 from.

7 MR. ROEBUCK: That was where there was a period
8 where there was no school traffic out there either.
9 It's a busy road out there. Yet you were able to
10 change your traffic count in some fashion to allow
11 longer hours during the day?

12 MS. PICCIRILLI: Correct.

13 MR. HARVEY: Traffic did back up during that
14 time.

15 MR. ROEBUCK: Had to.

16 MS. PICCIRILLI: I think it's a real important
17 thing that Tony was going to talk to, his average
18 workday out there was nine, nine and a half hours. We
19 did not shorten his day to seven hours. When we
20 changed these restrictions and he worked within those
21 revisioned restrictions, he was at nine to nine and a
22 half hours typically on the average per day. We had it
23 on our daily reports.

24 MR. ROEBUCK: I guess we wouldn't be here if it
25 weren't for the word confusion, and every time we get

1 here on one of these, it's confusion. When things are
2 that critical -- like Gene said, put it in capital
3 letters, this job has to be done from midnight until
4 4:00 a.m. or something.

5 MR. MOREFIELD: From the Department's
6 perspective, you have to understand what they just
7 said. It wasn't a totally night project. You could do
8 a lot of work, evidently.

9 MR. DUANE GAMM: No, not true. Very little work
10 could be done.

11 MR. MOREFIELD: The work that didn't require a
12 lane closure.

13 MR. STEVE GAMM: The type of work was very
14 minimal.

15 MR. MOREFIELD: Just let me finish. The value of
16 the work is not in question, the amount of work. What
17 we are talking about is some work could be done that
18 didn't require a lane closure. That's why the contract
19 didn't say this was a night only work. So you have to
20 understand there is some work that can be done that
21 don't require lane closures.

22 MR. DUANE GAMM: It also required that we get
23 special permission to attempt to work at night.

24 CHAIRMAN COWGER: Let me see if I can put this
25 thing together a little bit. I want to go back and

1 look at this traffic control plan sheet a minute.

2 In the DOT exhibit, you have to put general note
3 number 1 and note number 3 together. First off, number
4 3 says that basically in this situation you can't have
5 a lane closure between 6:30 a.m. and 8:00 p.m. because
6 you only got two lanes and you've got to keep two lanes
7 open. You can't have a lane closure.

8 Then what number one says is that when you refer
9 to standard index number 600, that you can't have a
10 drop-off of the magnitude that would be required to do
11 the base construction on either side of this road
12 without a certain offset between it and the edge of the
13 travel lane.

14 MS. PICCIRILLI: Correct, correct.

15 CHAIRMAN COWGER: Basically is how it works out.
16 Now, how was the work actually accomplished based on
17 that? That's what I want to know now. Let's get away
18 for a moment from discussing lane closures, night work,
19 all of that. How was the work actually done?

20 MR. DUANE GAMB: We started at seven o'clock in
21 the morning, we closed one lane of traffic depending on
22 which side of the road we were on, then we worked up
23 until just prior to 2:30. Then we opened up to traffic
24 again and didn't work on the widening anymore at that
25 point. Basically it was a sequence of operation.

1 First we come in and we extended a box culvert.
2 I'm not sure that we -- I guess we had to have a lane
3 closure for that, too, because our equipment was right
4 up to the edge of the road. We extended the box
5 culvert. When that was done, we could start our
6 widening on that side of the road.

7 Then we did all the work on the east side of the
8 road basically until we were ready to place asphalt on
9 it. Then the asphalt was placed and we did that in the
10 daytime with a 604 lane closure.

11 Then we moved to the other side of the road, did
12 the work on that side of the road in the same fashion.

13 MS. PICCIRILLI: How much of this work did you
14 physically do at night based on what you just told us?

15 MR. DUANE GAMM: We did none of it at night.

16 CHAIRMAN COWGER: I think we understand that.
17 Let's take the side where you had to actually widen the
18 pavement about 12 feet. That's the west side?

19 MS. PICCIRILLI: East side.

20 CHAIRMAN COWGER: That's what you are referring
21 to. On the east side when you were doing the boxing
22 out, the stabilizing, all of that, for the pavement
23 widening, you were maintaining traffic. You were
24 maintaining one-way traffic? In other words, you had
25 flagmen out there?

1 MR. DUANE GAMM: That's correct.

2 CHAIRMAN COWGER: You had traffic restricted,
3 alternate flow in one lane?

4 MS. PICCIRILLI: Based on the revised lane
5 closure.

6 CHAIRMAN COWGER: That's what actually happened?

7 MS. PICCIRILLI: Correct.

8 CHAIRMAN COWGER: What you did instead of
9 maintaining actual two-way traffic is what you did with
10 flagmen have one-way traffic through the work area?

11 MR. MOREFIELD: Let me ask a question. If in
12 fact that same work was done before 6:30 or after eight
13 o'clock, would it not have been done the same way
14 except it would have been at night?

15 MS. PICCIRILLI: Correct.

16 MR. MOREFIELD: The same operation would have had
17 to be done, it's just the time of day.

18 MS. PICCIRILLI: They wouldn't have needed an
19 18-foot lane. They could have done it with a 12-foot
20 lane.

21 MR. MOREFIELD: I'm saying the operation would
22 have been the same.

23 MR. DUANE GAMM: We probably would have had arrow
24 boards out and lots of lights. If you go back to -- in
25 the specification it tells us that the traffic will be

1 two -- two-lane traffic will be maintained 24 hours a
2 day. It doesn't allow that you can ever close it.

3 MS. PICCIRILLI: It says unless otherwise
4 specified in the plans in this same paragraph. It says
5 that. Unless otherwise specified in the plans or
6 special provisions.

7 MR. DUANE GAMM: Okay. Let's jump across, if you
8 look at the sequence of construction, in the two areas
9 that dealt with the widening of the road, they didn't
10 tell us that we needed to close the road.

11 But when they come to the asphalt work, they
12 turned around and told us -- I'm on the maintenance of
13 traffic plan, also. The first two items deal with the
14 widening on either side of the road and the third one
15 deals with applying the asphalt.

16 It tells you specifically that you have to use
17 index 604 to install the asphalt but for the other two
18 it's salient on that, which led us to believe, at least
19 RK & K to believe that a lane closure would not be
20 required for that operation.

21 MS. PICCIRILLI: Which is not in our standard.

22 CHAIRMAN COWGER: Let me go off on one more
23 thing. We talked about how the base widening was done.
24 I assume what happened there, when you talk about the
25 18 feet, the barricades were put down the middle of the

14

1 lane that was closed so that you could have 18 feet for
2 the traffic to operate in?

3 MS. PICCIRILLI: Correct.

4 CHAIRMAN COWGER: That gave you a six-foot
5 offset?

6 MS. PICCIRILLI: Correct.

7 CHAIRMAN COWGER: In that 18 feet you were still
8 alternating with one-way traffic. You were not trying
9 to maintain two lanes, 18 feet.

10 Now, how did you place the asphalt when you got
11 up over the existing road where you were placing the
12 overbuild and the friction course? Was it the
13 additional lane was there then and you had room to
14 maintain two-way traffic, and you didn't have the
15 drop-off situation to contend with? Is that basically
16 what it amounts to?

17 MS. PICCIRILLI: Are you talking about to
18 friction course when we did the resurfacing?

19 MR. DUANE GAMM: Well, what happened is the
20 shoulders were built on both sides, and so then they
21 come to the center of the road and they put the over
22 curb buildup course on from the center of the road to
23 the -- all the way over the shoulders in each direction
24 with maintaining.

25 In other words, that really probably -- well, a

1 little bit of a stretch maybe, but that would give us
2 close to 18 feet.

3 CHAIRMAN COWGER: But you didn't have the severe
4 drop-off to contend with at that point?

5 MR. DUANE GAMM: No.

6 CHAIRMAN COWGER: When you went over to the other
7 side to build the paved shoulder, how did you handle
8 that? At this point you have got through most of the
9 project, through 36 feet of pavement in place. We are
10 working on the other side. Was there a problem over
11 there with the --

12 MR. DUANE GAMM: Did the same thing, closed it,
13 restricted it to one lane of traffic.

14 MR. HARVEY: At the ends where you taper from 36
15 feet down to 24 on the end of the project is the only
16 place that you push the 18 foot down to 12. And that
17 was where we allowed that again, so as not to force the
18 paving operations at night. It was conceded at the
19 precon that they had intended to do the paving
20 operations at night, with the additional night costs
21 but we never allowed that.

22 MS. PICCIRILLI: Here I think the State went
23 above and beyond what it needed to do. He basically
24 did the whole job during the day, when it told him he
25 should have bid it at night -- built it at night. The

1 majority of it should have been done. You know, I have
2 a real problem because I felt like we went above and
3 beyond just to help out.

4 CHAIRMAN COWGER: We have heard that enough
5 I think, several times. Basically your statement is
6 primarily based on the notes contained on the traffic
7 control plan sheet?

8 MS. PICCIRILLI: Correct.

9 CHAIRMAN COWGER: The basis for saying that he
10 should have anticipated that he had to work at night,
11 particularly for the base widening work or anything
12 that required any significant drop-off along the edge
13 of a travel lane.

14 MS. PICCIRILLI: Or within two feet of the travel
15 lane, correct. And then the statement about the lane
16 closure guides, which is contained in the plans.

17 MR. PROCH: If you are familiar on page 8, notes
18 1 and 3 pretty well work together. On sequence of
19 construction it tells you operations, doing base
20 widening, you have to do one and three more or less.
21 It's just common construction practice.

22 CHAIRMAN COWGER: What was that last part of your
23 statement?

24 MR. PROCH: It's common construction practice in
25 District 7.

1 MS. PICCIRILLI: Statewide.

2 CHAIRMAN COWGER: To do what?

3 MR. PROCH: If you have a drop-off, you're doing
4 base widening, if you have an eight to ten-inch
5 drop-off, you have to get traffic blocked over.

6 MR. DUANE GAMB: Let me say this. There is a lot
7 of work done under counties using your same indexes,
8 and they go out and set up these narrow barricades, out
9 it to the edge of the road, have a drop-off, they do
10 the work that way. It's not uncommon that work --

11 MS. PICCIRILLI: We know all about it. We have
12 lots of complaints from contractors on that. We get a
13 lot of our State contractors who say how come they can
14 do it and we can't. I hear that all the time.

15 MR. DUANE GAMB: We don't care. All we want is
16 you to tell us up front which it is. If you had said
17 all this work is to be done at night, everything is
18 604, very simple, with no misunderstanding, we wouldn't
19 be here.

20 MR. HARVEY: That statement will not be found in
21 any of these plans that all work will be done at night.

22 MR. PROCH: If you can come up with a better
23 plan, we will accept it and go from there --

24 MR. DUANE GAMB: Why over here in your sequence
25 of construction tell us that the asphalt work has to be

15 1 done using 604? Why do that? It seems to me it's
 2 misleading. If from the other notes it means that
 3 everything has to be done using a 604 enclosure, why
 4 come back over here and state it for one operation
 5 only?

 6 It's at the very least ambiguous.

 7 MS. PICCIRILLI: -- reinforce the fact.

 8 MR. DUANE GAMB: Why tell us -- why go back and
 9 tell us that all work will be done in the daytime?

 10 CHAIRMAN COWGER: I think we have enough on the
 11 argument about the situation. Now let's go back and
 12 look at parts 1 and 2 of the claim.

 13 DOT, I think the contractor in his written
 14 submittal pretty well stated how he arrived at the
 15 compensation that he's claiming under parts 1 and 2.
 16 Do you have any problems with what he said there, if
 17 you make an assumption that there is entitlement?

 18 MS. PICCIRILLI: Yes, we do. Tony is going to
 19 talk about specifics, but the one basic -- the general
 20 and administrative costs, I have no idea where the
 21 \$42,000 comes from. It's not documented, verified, or
 22 justified. I have no idea where the \$42,000 comes
 23 from. I have seen no document except this one that
 24 says \$42,000. I can't substantiate that number in any
 25 way, shape or form.

1 MR. DUANE GAMM: You agree there are G and A
2 expenses, or do you agree that contractors don't have G
3 and A expenses?

4 MS. PICCIRILLI: I agree there are some overhead
5 expenses.

6 MR. DUANE GAMM: Would you want to use 10
7 percent? Would you be comfortable with 10 percent?

8 MS. PICCIRILLI: I don't know where the \$42,000
9 comes from. Tony will go into the specifics on idle
10 equipment.

11 MR. HARVEY: On claim number 1, he's basing it on
12 a 36-day delay. The 36 days derives from the date the
13 notice to proceed was issued and the day he began his
14 production work. He actually began work on contract
15 day number six, which actually only gives you five days
16 of idle time.

17 And for what reason he started on day six was not
18 because of the DOT. He actually began work on July 13.
19 If you will notice, the MOT was approved on June 25,
20 not hindering any delay on that work there.

21 Two of the first six days there were Saturday and
22 Sunday. And the contract day number two he did
23 mobilize and deliver materials to the project.

24 On his equipment rates, I have Blue Book rates,
25 an estimate on the Blue Book rates, because as you can

1 see it doesn't give any description of his equipment,
2 any model numbers.

3 MS. PICCIRILLI: We basically used industry
4 practice, 50 percent idle, from the Blue Book.

5 MR. HARVEY: I come up on the loader, \$90 at half
6 rate, would be \$180 per day full rate, the motor
7 grader, 150 at half rate. These are per-day rates.
8 The vibratory roller, \$180 per day, the backhoe, \$205.

9 Once again, this equipment was not idle for 36
10 days. It was delivered to the project on day two when
11 the mobilization and materials was delivered, which
12 only gives you four days of that equipment being idle
13 on the job.

14 That's basically on claim number 1. That's
15 basically it.

16 On number 2, this is for the time, on the cost
17 he's saying that is associated with the mandated lane
18 closure. He is asking for time from these flaggers,
19 which is -- flaggers are specifically included in the
20 maintenance of traffic lump sum. That's one reason we
21 have a lump-sum item.

22 MS. PICCIRILLI: That's in his contract, pay item
23 A, 102-1. It specifically says flaggers are not paid
24 as a separate item. It's typical of all of our
25 standards. It specifically states that in 102-1 under

1 pay.

2 CHAIRMAN COWGER: Will I find that in here?

3 MS. PICCIRILLI: No, it will be in -- well, yeah,
4 it should be. 102-1. Compensation -- no, it's on
5 page --

6 CHAIRMAN COWGER: What does it say on page 27?

7 MS. PICCIRILLI: Under compensation, A 102-1-6,
8 maintenance of traffic. "When no separate item of
16 maintenance of traffic is included in the proposal, the
9 cost of all work specified in this section shall be
10 included in the price for the other pay items which are
11 included in the contract."
12

13 CHAIRMAN COWGER: So there was no separate pay
14 item for flagmen?

15 MS. PICCIRILLI: Correct.

16 CHAIRMAN COWGER: That's all we need to know.
17 I understand what you're saying now.

18 MR. HARVEY: Claim number 2, part 2, placement of
19 barricade sections, he's saying he had lane closure for
20 36 days.

21 From reviewing our daily reports, I find the
22 conditions only required a lane closure for 27 days.
23 If I remember right, that's probably stretching the
24 days that lane was actually closed for 27 days. A half
25 hour per day to arrange these barricades, this is --

1 these barricades would have to be adjusted around this
2 equipment continuously.

3 The way he done it, he moved them first thing in
4 the morning from five to ten minutes, that was the
5 limit of that movement until the end of the day.

6 His lane closure -- this project was about a
7 quarter of a mile in length. They was working in
8 quadrants of the intersection. He closed about 600 or
9 700 feet of pavement at the time. He worked on
10 quadrants. I don't believe it takes a half hour for a
11 man to walk 600 feet to move a barricade over six feet.
12 I think that's stretching it.

13 CHAIRMAN COWGER: How much do you think is
14 reasonable?

15 MR. HARVEY: Five to ten minutes. As I say,
16 these barricades would have to be adjusted no matter
17 which lane they used, would have to be moved around the
18 equipment continuously.

19 CHAIRMAN COWGER: Okay.

20 MR. HARVEY: This goes on into the rental rates
21 again on his equipment. It's the same as what I have
22 before, the down time for the half hour he's alleging.

23 On the shortened workday, he says we shortened
24 his workday until 2:30 p.m. Our dailies and our
25 project chronology, if you have a copy of that in your

1 pack, it shows an average of nine to nine and a half
2 hours per day of working time.

3 As we say, once again, all this work did not
4 require a lane closure. It all did not stop at 2:30.

5 Again, that was 27 days that he actually closed
6 the lanes.

7 The big issue on that one is he's basing his
8 average workday on that section for nine hours. He
9 actually worked nine to nine and a half hours. He
10 worked at or above what he had estimated working on
11 this project per day.

12 CHAIRMAN COWGER: To make it -- to speed things
13 up a little bit, what kind of work could go on after
14 2:30?

15 MR. HARVEY: Anything two feet away from the
16 pavement, ditch dressing, box culvert construction.

17 MS. PICCIRILLI: There's pictures here. There
18 are ditches that needed to be graded, there was the
19 railroad improvements that need to be done that he had
20 a lane closure from the county to do, that he
21 physically closed Debuel Road to do.

22 CHAIRMAN COWGER: We can understand that, but the
23 operation that could not proceed was the base widening
24 operation. Was the crew and equipment assigned to that
25 operation able to do anything else after 2:30?

1 MR. HARVEY: There was a three-man crew that done
2 everything on the job.

3 CHAIRMAN COWGER: What?

4 MR. HARVEY: One three-man crew did everything on
5 the project.

6 CHAIRMAN COWGER: How about the equipment?

7 MR. HARVEY: It was the same men, same equipment.

8 MR. PROCH: Our daily reports substantiate that.

9 MR. HARVEY: There was no down time of any. The
10 hours we show working nine to nine and a half hours was
11 full production time.

12 CHAIRMAN COWGER: Do you have anything else then
13 to say about the monetary parts of parts 1 and 2?

14 MR. HARVEY: On what we have to -- what they
15 submitted a backup for that we can dispute was the
16 rental rates and the actual times is all. The rest of
17 it there's not enough backup.

18 CHAIRMAN COWGER: Okay. DOT, is there anything
19 else that you need to comment on? I want to ask the
20 contractor a few questions. Well, let me ask him
21 questions and then we will give you one more
22 opportunity to come back.

23 This is kind of a minor one, but -- I won't ask
24 that. I guess the contractor ought to be given the
25 opportunity for a moment to explain how he arrived at

1 that G and A cost that he included in part 1.

2 MR. DUANE GAMM: We took it off of our plans,
3 what our financial statement was for the first six
4 months because we had only been operating in this
5 business for a short time, took our G and A expenses
6 out of that. At any rate, that's what we took.

7 We divided that by, I think we took that expense
8 and divided it by two, assuming that you have two jobs
9 going on concurrently, which was probably a little bit
10 of a stretch, but that's how we arrived at that.

11 We don't have a problem with using a percentage
12 of a claim, I guess, a percentage such as 10 percent
13 for overhead or whatever. That's how we arrived at
14 that number at that time. I think further down we
15 didn't do it that way, but that's what we had
16 originally used.

17 CHAIRMAN COWGER: So, you are willing to deviate
18 somewhat from what you claimed to take a look at this?

19 MR. DUANE GAMM: Just take a standard 10 percent
20 as you modify, do change order work. That would be
21 acceptable.

22 CHAIRMAN COWGER: What about the statements that
23 DOT made about equipment rental rates? They cut them
24 substantially from what you have.

25 MR. DUANE GAMM: We were prepared to start the

1 job at the time the notice to proceed was issued. They
2 are allowing we were only entitled to compensation
3 after we delivered it to the job.

4 Based on that, then what we should have done is
5 hauled all our equipment out there on the date of the
6 notice to proceed and left it parked. That's
7 essentially what happened. We had people that were
8 laid off that we had pulled back in. We didn't -- when
9 we found out we had this dispute, we didn't bring them
10 back to work until close to the time we were ready to
11 start.

12 We thought we were going to start a little sooner
13 than we did. We brought them back the 1st of July and
14 we didn't physically start until I think the 13th of
15 July.

16 So, the idle time on the front end is just as
17 they stated. We mobilized within a day of having an
18 agreement as to when we could go to work.

19 CHAIRMAN COWGER: You didn't address the
20 equipment rates, though, themselves.

21 MR. DUANE GAMM: The rates? They are cutting in
22 half idle equipment.

23 MS. PICCIRILLI: Based on Blue Book, 50 percent
24 idle.

25 MR. DUANE GAMM: I don't know where you could go

1 out and rent equipment from anybody and leave it parked
2 and they would let you pay half rates on it. That
3 certainly isn't the practice in the community.

4 I think if we own equipment, we are entitled to
5 derive the same income from it as if it were rented.
6 That's the reason for owning it is to make a profit
7 with the equipment.

8 CHAIRMAN COWGER: Where did you get these sheets
9 that were in your -- are they out of the AD book?

10 MR. DUANE GAMM: Out of the AD, 1990.

11 CHAIRMAN COWGER: We agree with that, the rates
12 he has, they came out of that book?

13 MS. PICCIRILLI: That's standard.

14 CHAIRMAN COWGER: Yours came out of that same
15 book, DOT, except you adjusted them?

16 MS. PICCIRILLI: We did ours out of the Blue
17 Book. We have been told 50 percent idle, 75 percent
18 active.

19 CHAIRMAN COWGER: What is the figure on active?

20 MS. PICCIRILLI: Seventy-five from the Blue Book.
21 That's how we have been told to do all of our claims.

22 CHAIRMAN COWGER: Which Blue Book rate do you
23 use, weekly, monthly or what?

24 MS. PICCIRILLI: Base it on monthly, then divide
25 it by days.

1 CHAIRMAN COWGER: Okay. I think there's one
2 other thing we need to discuss a minute that seems
3 pretty germane to the situation here. That is the fact
4 that the contractor is claiming between -- let me get
5 my figures here -- the date of the preconstruction
6 conference and July 13 that he was delayed.

7 I don't think that's quite the way it was. How
8 did you arrive at your number of days?

9 MR. DUANE GAMM: We were prepared to move on the
10 job I think the Monday after the preconstruction
11 meeting. I think the notice to proceed was issued two
12 days for that same period. Might have been Sunday or
13 something.

14 CHAIRMAN COWGER: Looking at your September 15
15 letter to DOT, you're saying that you received a notice
16 on June 7th to proceed and you didn't proceed until
17 June 13.

18 MR. DUANE GAMM: Until July 13.

19 CHAIRMAN COWGER: July 13, sorry. Is that the
20 basis for the 36 days delay?

21 MR. DUANE GAMM: That's correct.

22 CHAIRMAN COWGER: The time between those two
23 dates?

24 MR. DUANE GAMM: Correct.

25 CHAIRMAN COWGER: You are saying you could have

1 begun work on June 7, 1992, if this issue of how to
2 maintain traffic had been resolved?

3 MR. DUANE GAMM: That's correct.

4 CHAIRMAN COWGER: Your position is the whole
5 matter of getting this resolved falls on DOT because
6 they didn't tell you?

7 MR. DUANE GAMM: Yes.

8 CHAIRMAN COWGER: Now, DOT, tell us, if you can
9 summarize your position on why it is the contractor
10 didn't begin work until July 13.

11 MS. PICCIRILLI: The work order was issued
12 June 7. We agree with that. It's a 30-day window the
13 contractor has to start with. The issuance letter says
14 you can either start the 31st day after this date or
15 whenever you start, whichever is first.

16 Basically at the June 5 preconstruction
17 conference he submitted a maintenance of traffic plan
18 that said he was going to use 604 and 605. We at that
19 point rejected it. And it says before he starts work
20 he has to have an approved erosion control plan and
21 maintenance of traffic plan before he starts work.

22 His maintenance of traffic plan was approved on
23 June 25. So he could not have possibly started work
24 until June 25 because he has to have an approved
25 maintenance of traffic plan before he starts.

1 MR. DUANE GAMM: Could I interrupt a second.
2 I guess we are back into the reason it took so long
3 to get that approved is because it was not what we
4 intended based on the documents.

5 MS. PICCIRILLI: I think we all understand that.
6 He could have started June 25. I don't know why he
7 didn't start until July 13. He had an approved erosion
8 control plan and maintenance of traffic on June the
9 5th.

10 CHAIRMAN COWGER: On June 25 he had an approved
11 maintenance of traffic plan. Is that the plan actually
12 used to construct the project?

13 MR. HARVEY: It was the one contained in the
14 plans as further allowance, lane closure allows for the
15 six-foot offset.

16 MR. DUANE GAMM: That would be assuming we were
17 going to work at night, we had to work at night.

18 MS. PICCIRILLI: Correct. He was going to do
19 his maintenance of traffic according to sheet 8 of the
20 plans, which had the lane closure restrictions.

21 CHAIRMAN COWGER: That approval on June 25 was
22 predicated on night work?

23 MS. PICCIRILLI: Correct, on the contract.

24 CHAIRMAN COWGER: Then it was some time down in
25 July is the date I have --

1 MS. PICCIRILLI: I think it was the 7th that we
2 sent that letter to him.

3 MR. DUANE GAMM: July 10 you issued the letter.
4 You told us about it sooner.

5 MS. PICCIRILLI: We told him about it sooner.

6 CHAIRMAN COWGER: I think I understand that now.

7 MS. PICCIRILLI: There was no reason why he
8 couldn't start June 25.

9 CHAIRMAN COWGER: If he had been willing to work
10 at night.

11 MS. PICCIRILLI: But, you know, for the first six
12 days he did clearing and grubbing, mobilization, things
13 such as that.

14 MR. HARVEY: I want to bring out, at the precon
15 we went over his schedule. He said he did not intend
16 to begin until June 15. A tentative beginning date was
17 June 15. He also said that any clearing and grubbing
18 would begin, he said maintenance of traffic and erosion
19 control items would be done within the first three
20 days, clearing and grubbing won't begin until day three
21 to day six of the contract. Clearing and grubbing
22 began on day six.

23 MS. PICCIRILLI: Which was all daytime
24 operations.

25 MR. HARVEY: Which was right in accordance with

1 his proposed schedule.

2 CHAIRMAN COWGER: That date you said the
3 contractor said he was going to start, at the
4 preconstruction conference, was June 15?

5 MR. HARVEY: The words were a tentative date of
6 June 15 pending approval of erosion control, MOT and
7 whatever items were necessary.

8 CHAIRMAN COWGER: The point is the contractor,
9 regardless of all of this, had no intention of
10 beginning work until June 15?

11 MR. HARVEY: That's correct.

12 CHAIRMAN COWGER: Regardless of the dispute over
13 the traffic control plan.

14 Mr. Contractor, do you have anything to say about
15 that, since we have kind of --

16 MR. STEVE GAMM: When you're given a schedule at
17 the preconstruction, you are assuming things are going
18 to be approved, you are going to do things, things are
19 going to run fine. You have time windows that you set
20 your schedule up for. That's all contingent upon
21 everything being approved, MOT plan and so forth.
22 Those dates are in accordance --

23 MR. DUANE GAMM: The 15th was the latest date we
24 thought we would get started.

25 CHAIRMAN COWGER: I think the Board has enough

1 information now to sit down and deliberate on this
2 thing. Unless either party has something really
3 burning, we are going to close.

4 MR. PROCH: You say you had a concurrent job
5 going at this time. What was the normal working hours
6 on that job?

7 MR. DUANE GAMM: We didn't have a concurrent job.
8 We assumed that we would. Normally we would.

9 MS. PICCIRILLI: If it would help the Board,
10 I would be happy to go to the other people who bid on
11 this particular project and find out what their
12 interpretation of the plans was, if they felt it was
13 confusing. I don't think one contractor -- I'm not
14 sure how many bid this. If there are eight that bid
15 this, I'm not sure one is a representative number.

16 CHAIRMAN COWGER: We understand your position.
17 Let me ask the Board. Do you think this Exhibit 3
18 letter is going to be significant enough in our
19 deliberations for us to get that additional information
20 or not?

21 MR. ROEBUCK: It would with me. I put confusion
22 as one of our major problems here. I'd like to know.
23 To me there was confusion in listening to both sides.

24 CHAIRMAN COWGER: The way we will handle this is
25 that if DCT wishes to submit to the Board in writing a

1 list of all of the other contractors that bid on this
2 project and any information that you might obtain from
3 them in writing stating how they interpreted the
4 maintenance of traffic on this contract, the Board will
5 accept that for consideration if submitted to us prior
6 to September 20.

7 And at the same time you're instructed to furnish
8 the contractor a copy of all of that information.

9 And the contractor, if you wish to rebut to that,
10 we are going to need your rebuttal by no later than
11 September 30.

12 MR. DUANE GAMM: Okay. We can live with this.

13 CHAIRMAN COWGER: Anything else?

14 MR. DUANE GAMM: Relative to what Tony Harvey
15 said about the work hours, once you close the lanes
16 down out there, you don't have a lane widening job
17 going on, there was virtually no productive work that
18 could be done.

19 CHAIRMAN COWGER: I think we can understand that.
20 Anything else? Mr. Roebuck, Mr. Morefield, any
21 questions?

22 MR. ROEBUCK: No.

23 MR. MOREFIELD: No.

24 CHAIRMAN COWGER: This hearing is hereby closed.
25 The Board will meet sometime approximately six weeks

1 from now to deliberate on this claim and you will have
2 our order shortly thereafter.

3 (Whereupon, the hearing was concluded at 11:20 a.m.)
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CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
COUNTY OF LEON)

I, CATHERINE WILKINSON, Court Reporter, do hereby
certify that I was authorized to and did stenographically
report the foregoing proceedings;

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

Dated this 16th day of September, 1993.

Catherine Wilkinson

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

STATE OF FLORIDA)
COUNTY OF LEON)

The foregoing certificate was acknowledged before me
this 16th day of September, 1993, by CATHERINE WILKINSON who
is personally known to me.

Kathleen Grow

KATHLEEN GROW
Notary Public - State of Florida
My Commission expires April 20, 1997.
Commission # CC278204
BONDED THRU TROY FAIR INSURANCE, INC.