

STATE ARBITRATION BOARD

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NOTICE

In the case of The Cone Corporation versus the Florida Department of Transportation on Project No. 10110-3566 in Hillsborough County, Florida, both parties are advised that State Arbitration Board Order No. 4-95 has been properly filed on August 21, 1995.



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

S.A.B. CLERK

AUG 21 1995

FILED

Copies of Order & Transcript to:

Jimmy B. Lairscey, Jr., PE, Director, Office of Construction/FDOT
Rammy Cone, President, The Cone Corporation

STATE ARBITRATION BOARD

ORDER NO. 4-95

RE:

Request for Arbitration by
The Cone Corporation on
Job No. 10110-3566 in
Hillsborough County

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

H. Eugene Cowger, P. E. Chairman
Bill Deyo, P. E. Member
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a
request for arbitration commencing at 12:40 p.m. on
Wednesday, May 31, 1995.

The Board Members, having fully considered the evidence
presented at the hearing, now enter their order No. 4-95
in this cause.

ORDER

The Contractor presented a request for arbitration of
a two Part Claim in a total amount of \$250,000.00.

PART I

The Contractor alleges that the quantity in the plan Summary
of Clearing and Grubbing is substantially in error and
therefore, the lump sum price for the item Clearing and
Grubbing should be adjusted upward to reflect the actual area
over which clearing and grubbing was accomplished. The plan
Summary of Clearing and Grubbing included only areas adjacent
to widening of the existing pavement. He contends that this

is a plan error and the areas in which reworking of shoulders was done, shoulder pavement trenches were excavated and slope protection was constructed under the bridge should have been included in the plan Summary of Clearing and Grubbing.

The Contractor stated that the areas in question should have been included in the plan Summary of Clearing and Grubbing because Section 110 of the Standard Specifications states that removal of roots, and protruding objects is included in the work of Clearing and Grubbing . Also, Article 110-11.2.4 says "When no item for clearing and grubbing is included in the proposal, the cost of any work of clearing and grubbing which is necessary for the proper construction of the project shall be included in the contract price for the structure or other item of work for which such clearing and grubbing is required". (NOTE: There is an item for clearing and grubbing in the proposal for this job)

He also pointed out that plans for another project show areas of shoulder reworking included in the plan Summary of Clearing and Grubbing even though the Typical Section did not indicate clearing and grubbing of such areas. Also, the Typical Section for another project showed clearing and grubbing in areas where shoulder reworking was to be done.

PART II

At the beginning of work on this project the Contractor submitted a Value Engineering Change Proposal (VECP) providing for a change in the design of the replacement bridges over English Creek. The proposal was to change the

drilled shaft type foundation to a concrete pile type foundation and to substitute a poured-in-place superstructure for the precast prestressed slab superstructure. After unsuccessful attempts to negotiate a foundation design that was satisfactory to DOT, the Contractor withdrew the VECP in order to allow work on the project to progress.

The Contractor contends that DOT acted in an arbitrary and capricious manner in evaluating the VECP by placing unreasonable design constraints on the proposed pile foundations that were not considered in the designing of the bridges included in the DOT plans.

The DOT design considerations for the redesigned bridges dealt primarily with the effect of vibrations from pile driving on the existing bridge that would be used for maintaining State Road 60 traffic, sufficient penetration of piles to afford scour protection and lateral fixity of pile tips. The Contractor presented detailed arguments rebutting each of the design constraints imposed by DOT on the VECP bridge design.

There is also a dispute over the amount of the cost saving offered by the Contractor.

The Contractor's claim is for design costs he incurred in conjunction with the VECP, loss of his portion of the VECP savings, loss of anticipated profit and interest on these costs.

The Department of Transportation rebutted as follows:

PART I

The plan Typical Sections show clearing and grubbing only in areas adjacent to pavement widening.

The work detailed in Section 120 of the Standard Specifications includes the work of excavating materials of whatever nature within the required limits of excavation unless otherwise specified in clearing and grubbing. No clearing and grubbing of the areas in dispute was specified in the plans. Payment for all work within the limits of reworking shoulders is included in compensation as provided in Section 577. Shoulder construction did not include clearing and grubbing operations.

The Designer has the option of showing clearing and grubbing of paved shoulder areas and reworked shoulder areas, but these areas are included for payment under the item Clearing and Grubbing only when so shown.

PART II

DOT made every effort to provide a fair assessment of the Contractor's VECP to the extent that nine DOT offices were involved in the review. The VECP was not rejected, but instead a qualified acceptance was given based on certain necessary technical requirements being met by the Contractor's design.

DOT supported denial of the Contractor's claim for additional compensation by quoting from 4-3.5 of the Standard Specifications: (1) DOT shall not be liable for any VECP

development cost if the VECP is withdrawn; (2) pending execution of a Supplemental Agreement implementing an approved VECP, the Contract shall remain obligated to perform in accordance with the terms of the existing contract; and (3) the Engineer shall be the sole judge of the acceptability of a VECP.

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

PART I

1. The plans do not show clearing and grubbing of areas in which reworking of shoulders was accomplished and the work of removing vegetation from these areas is incidental to the work under the item Reworking Shoulders.
2. The Contractor did not demonstrate that any significant work associated with clearing and grubbing was accomplished within the areas in dispute.

PART II

1. The penetration required by DOT for piles in end bents were based on the tip elevations for drilled shafts being set at the same elevation to achieve uniformity within the structure.
2. It appears that DOT was attempting to achieve a pile foundation design with the same attributes as the drilled shaft foundation design, regardless of the basic design requirements for this type of bridge.

3. DOT concerns in regard to the effect of pile driving vibrations on the existing structure used for maintaining traffic did not prove to be valid.
4. The Contractor did not establish the validity of his claim for loss of VECP profit.

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

The Department of Transportation shall reimburse the Contractor as follows for each part of his claim:

PART I

Nothing

PART II

The amount of \$65,000.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$239.10 for Court Reporting Costs.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$239.10 for Court Reporting Costs.

The Board points out that its decision on PART II of this claim is based on the particular set of circumstances that existed in relation to this project. This decision of

the Board should not be taken as setting a precedent for interpretation of the clause in Subarticle 4-3.5.4 of the Standard Specifications reading "The Engineer shall be the sole judge of the acceptability of a VECP....." when a Value Engineering Change Proposal is being considered on another project.

S.A.B. CLERK
AUG 21 1995
FILED

Tallahassee, Florida

Dated: 21 August 1995

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

Certified Copy:

Bill Deyo
Bill Deyo, P. E.
Member

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

John P. Roebuck
John P. Roebuck
Member

21 August 1995
Date

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman
 Mr. Jack Roebuck
 Mr. Bill Deyo

APPEARING ON BEHALF OF THE CONE CORPORATION:

Mr. Steve Zendegur
 Mr. Bob Graham
 Mr. Rammy Cone

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. John Temple
 Mr. Rob Elliott
 Mr. Pepe Garcia
 Mr. Mike Irwin

* * *

I N D E X

EXHIBITS

PAGE

Exhibit Nos. 1 and 2 in evidence	4
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CERTIFICATE OF REPORTER

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P R O C E E D I N G S

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

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

13 The terms of Mr. Deyo began March 21, 1995 and
14 will expire June 30, 1995. The terms of Mr. Roebuck
15 and myself began July 1, 1993 and expire June 30, 1995.

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

19 (Whereupon, all witnesses were duly sworn by the
20 Chairman.)

21 CHAIRMAN COWGER: The documents which put this
22 arbitration hearing into being are hereby introduced as
23 Exhibit No. 1. Exhibit 1 consists of the original
24 request for arbitration, dated March 13, 1995, some
25 supplemental information submitted as a revised request

1 for arbitration on March 31, 1995, and some additional
2 information consisting of several exhibits, C, D, E and
3 F, which are attached to a letter from the contractor
4 dated May 16, 1995. All parties have copies of that
5 information.

6 The Exhibit No. 2 is a package of rebuttal
7 information dated May 18, 1995, from the Department of
8 Transportation. This information was furnished to the
9 Board and to the contractor approximately ten days ago.
10 (Whereupon, Exhibit Nos. 1 and 2 were received in
11 evidence.)

12 CHAIRMAN COWGER: Does either party have any
13 other information it wishes to put into the record as
14 an exhibit?

15 (Discussion off the record)

16 CHAIRMAN COWGER: While we were off the record,
17 there was a discussion of exhibits. Exhibit No. 3,
18 presented today by the contractor, is a packet of
19 information dealing with the VEC proposal, portion of
20 the claim.

21 The remaining exhibits are Department of
22 Transportation exhibits, Exhibit No. 4 is some
23 photographs on a single sheet, Exhibit 5 is a
24 foundation plan from project number 90060-3589.

25 Exhibit 6 is a copy of the clearing and grubbing

1 specifications from the DOT Standard Specifications.
2 Exhibit 7 is a packet of correspondence with a
3 September 25, 1991 letter from Sverdrup Corporation on
4 top of that package.

5 I believe now at this point we have identified
6 all of the exhibits that will be presented.
7 (Whereupon, Exhibit Nos. 3 through 7 were received in
8 evidence.)

9 CHAIRMAN COWGER: Does either party desire to
10 have additional time to examine any of the exhibits
11 that were presented this morning? Hearing nothing, we
12 will move on.

13 During this hearing, the parties may offer such
14 evidence and testimony as is pertinent and material to
15 the controversy, and shall produce such additional
16 evidence as the Board may deem necessary to an
17 understanding and determination of the matter before
18 it.

19 The Board shall be the sole judge of the
20 relevance and materiality of the evidence offered.

21 The parties are requested to assure that they
22 receive properly identified copies of each exhibit
23 submitted during the course of this hearing and to
24 retain these exhibits. The Board will furnish the
25 parties a copy of the court reporter's transcript of

1 this hearing, along with its final order, but will not
2 furnish copies of the exhibits.

3 The hearing will be conducted in an informal
4 manner. First the contractor's representatives will
5 elaborate on their claim, and then the Department of
6 Transportation will offer rebuttal.

7 Either party may interrupt to bring out a
8 pertinent point by coming through the Chairman.
9 However, for the sake of order, I must instruct that
10 only one person speak at a time.

11 Since this claim consists of two very distinct
12 parts, I would suggest that we deal with the parts
13 separately. Is that agreeable with the parties?

14 MR. IRWIN: Yes, sir.

15 MR. CONE: Yes, sir.

16 CHAIRMAN COWGER: Mr. Cone, if you will then
17 present your information on the clearing and grubbing
18 portion of the claim, and then DOT will rebut that
19 portion before we move on.

20 MR. CONE: Okay. Mr. Chairman, I have already
21 found an error in my submittal. Under the clearing and
22 grubbing claim on the summary on page 3, which was in
23 Exhibit 1, it shows 115,625. It should be 125,625.

24 MR. ROEBUCK: Typo?

25 MR. CONE: Yes, sir, typo. In Exhibit A, the

1 correct amount is shown.

2 MR. ROEBUCK: Is the total changed on that?

3 MR. CONE: To be honest with you, I haven't added
4 it up. I don't know whether --

5 CHAIRMAN COWGER: May I interrupt a minute. That
6 brings to mind one other thing. The contractor's total
7 claim is well over the \$250,000 limit for arbitration
8 allowed under the law. But the contractor has elected
9 to reduce the amount of his claim to \$250,000.

10 Is that right, Mr. Cone?

11 MR. CONE: Yes, sir, that is right.

12 MR. IRWIN: Where is that again?

13 MR. CONE: In Mr. Cowger's Exhibit 1, the
14 May 13th letter -- excuse me, March 13th letter, the
15 original submittal.

16 MR. IRWIN: Is this in your letter or in the
17 original part of it?

18 MR. CONE: It is right there (indicating).

19 CHAIRMAN COWGER: So, it's 125,000 instead of
20 115,000?

21 MR. CONE: Yes, sir. That was not included in
22 the total, so the total should be 349. But we still
23 elect to go for the 250.

24 CHAIRMAN COWGER: Okay.

25 MR. CONE: Basically we have a difference of

1 opinion between the contractor and the DOT with regard
2 to payment on clearing and grubbing. The project was
3 bid lump sum clearing and grubbing.

4 We as a contractor bid it based on a take-off in
5 the plans that gave a summary of clearing and grubbing.
6 That's how our lump-sum price was calculated.

7 In our opinion on page A-1 under the summary of
8 the clearing and grubbing claim, that pretty well says
9 it all, Mr. Cowger. Our lump-sum price of \$10,000 was
10 based on an estimated cost of \$12,500 per acre. The
11 total amount is -- how we came up with that is in
12 Exhibit A. That's how we came up with the \$12,500 per
13 acre.

14 We calculated a total acreage of 10.05 acres that
15 was actually cleared, and that came up to \$125,625.

16 I apologize, there's one other submittal that
17 should have been made that wasn't included in this
18 package. Basically there is -- I don't have copies for
19 everyone either, but I think the DOT will agree with
20 all of this.

21 Page 3 of the plans is a typical section of the
22 pay limits for clearing and grubbing. I believe that
23 typical may be in the DOT's rebuttal.

24 Do you know, Rob? It might be easier for you all
25 to refer to that.

1 MR. GRAHAM: Page 3 is in the rebuttal.

2 MR. CONE: If you will look in the middle of the
3 left-hand -- you say it's in Section G --

4 CHAIRMAN COWGER: It's in Tab G.

5 MR. CONE: If you look on their highlighted area,
6 it shows a paved shoulder detail, and the plans do not
7 indicate -- that typical does not indicate clearing and
8 grubbing. In our opinion we feel like it should have.
9 That shoulder was added. That shoulder had to be
10 reworked.

11 The specifications in our opinion are very clear
12 that if there is an item that -- that clearing and
13 grubbing includes anything -- removing anything in the
14 area of excavation. Obviously the DOT does not agree
15 or we wouldn't be here.

16 And if I might, I will go to Exhibit C in the --
17 which I call my Exhibit C, which I believe is -- is
18 that Exhibit 3, Gene, that --

19 CHAIRMAN COWGER: Your Exhibit C is still in
20 Exhibit 1. It's behind the letter dated May 16th.

21 MR. CONE: All right. What I've done in
22 Exhibit C is given you all another project in
23 Hillsborough County, which is a job of similar scope.

24 If you look on page C-3 of that exhibit, it
25 indicates in the lower right-hand corner, the identical

1 paved shoulder detail that we have in our plans for
2 this particular project. However, in this project --

3 CHAIRMAN COWGER: Excuse me, the project that we
4 are looking at now? 3522?

5 MR. CONE: Yes, the 3522 project. The typical is
6 identical to our 3566 project.

7 MR. IRWIN: Where are you at?

8 MR. CONE: On page 3-C of my submittal, where the
9 pink highlight is down there.

10 MR. IRWIN: Okay.

11 MR. CONE: Now, that typical section, again, does
12 not indicate a clearing and grubbing limit, but that
13 area was included in the summary of clearing and
14 grubbing on sheet C-3, which I have highlighted in
15 pink.

16 CHAIRMAN COWGER: Excuse me, C-4.

17 MR. CONE: I apologize, C-4. And particularly
18 that station 25+2272 to station 44, that is exactly the
19 same nature of work as our 3566 project. The
20 contractor on that project was compensated for clearing
21 and grubbing in that area.

22 I have also attached a copy of the computation
23 book for that 3522 project, which does show that that
24 particular area -- that's page C-6 -- that that
25 particular area was included in their summary of

1 clearing and grubbing.

2 I guess I'm trying to point out that there seems
3 to be a lack of clarity between different projects bid
4 within the same district. As a matter of fact, the --

5 MR. ROEBUCK: Is that the same designer?

6 MR. CONE: Yes, that's what I was going to say,
7 that's the same designer on both jobs, down to the --
8 not just the same company, but down to the same man.
9 Why he would change in midstream between jobs, I have
10 no idea.

11 Page C-5 is really just something for your
12 information. On the top left-hand corner, it shows
13 where the job starts and what the nature of work is in
14 that area. And all that's to be done in that
15 particular area is to widen, add shoulders where there
16 aren't any.

17 Exhibit D is a project in Osceola County,
18 92030-3549, that was recently bid, to the best of my
19 recollection, in the last three months.

20 Page D-2 shows you a typical section of that
21 project and shows that the limits of clearing and
22 grubbing do, indeed, take into account the shoulder
23 pavement and the reworking shoulder area.

24 Again, this job is of the same type of work as
25 our 3566 project.

1 Exhibit E is a situation that occurred on this
2 project in question where the new bridge was wider than
3 the old bridge. As a result, there was insufficient
4 shoulder width to tie the new road into the new
5 structure.

6 Basically what that was, there was some guardrail
7 that had to be added, and with the new safety
8 regulations or whatever, there was not enough fill or
9 shoulder area to allow us to put the guardrail in and
10 keep it backed up as well.

11 The DOT agreed that there was a problem here and
12 the road had to be widened in that area. Additional
13 borrow was added, and the shoulder was widened.

14 They also agreed in the negotiations that
15 clearing and grubbing of this area was necessary. They
16 paid us at the rate of \$12,500 per acre, which is the
17 same unit price we are requesting for the clearing for
18 the remainder of the job.

19 Pages E-2 and E-3 are nothing but copies of the
20 supplemental agreement for the borrow material.
21 I believe there is some --

22 CHAIRMAN COWGER: Looks to me like there's two
23 supplemental agreements here.

24 MR. CONE: Yes, sir, there is. Page E-4 is the
25 supplemental agreement that talks about adding the item

1 of 110-2. It was in order to compensate the contractor
2 for additional work not specified on the project plan.
3 That was basically added just to let you -- to give
4 further proof that they did compensate us for that.

5 Page E-5 is just an illustration on what the
6 problem was at the bridge. I've stressed that it's not
7 to scale and my artistry is not the best, but hopefully
8 Mr. Elliott will remember the problem and more or less
9 agree.

10 Exhibit F is nothing but a repeat of all of the
11 specifications, both what The Cone Corporation
12 interprets and then what the DOT interprets.

13 And unless you all want me to go into further
14 detail, I don't plan on spending any time on Exhibit F.

15 CHAIRMAN COWGER: We will use that for reference
16 later on. Before you leave that, let me go back to
17 Exhibit E a minute.

18 I see two supplemental agreements, one of them
19 having to do with adding borrow excavation, which was
20 apparently done at the end of the bridge to allow for
21 installation of guardrail.

22 MR. CONE: Yes, sir.

23 CHAIRMAN COWGER: The other one, which is
24 identified as supplemental agreement number 4, deals
25 with what looks to be addition of some drainage work,

1 pipes, inlets, that sort of thing.

2 MR. CONE: Yes, sir.

3 CHAIRMAN COWGER: On that one they have added an
4 item, I think, for clearing and grubbing. Was that
5 really what happened there? Can anybody tell me, or
6 was it just an increase in the quantity?

7 MR. ELLIOTT: Increase in the quantity.

8 CHAIRMAN COWGER: It's not really too pertinent,
9 but I just wanted to be sure. That was in conjunction
10 with some additional clearing and grubbing that had to
11 be done in the areas where these additional drainage
12 structures were installed? Am I correct there?

13 MR. ELLIOTT: It was around the bridge and
14 underneath the bridge, as I understand it.

15 MR. CONE: If my memory is correct, it was
16 strictly at the bridges. What happened, Gene, this
17 supplemental agreement, we had a lot of loose ends
18 hanging out on the job at that time, and they elected
19 to lump a bunch of them together.

20 CHAIRMAN COWGER: I've got you.

21 MR. CONE: The drainage has nothing to do with
22 the clearing and grubbing.

23 CHAIRMAN COWGER: Does DOT agree that both of
24 these supplemental agreements were ultimately executed?

25 MR. IRWIN: Yes, sir.

1 CHAIRMAN COWGER: These documents don't show it.
2 Well, maybe they do and I just can't read it. Well,
3 anyway, that was the end of my questions.

4 Mr. Cone, did you have anything further to say
5 about the clearing and grubbing portion of the claim
6 then?

7 MR. CONE: Mr. Cowger, not really, other than a
8 general comment that, you know, perhaps my choice of
9 words, calling it an error in the plans, is not the
10 best choice of words, but it certainly seems to me that
11 there is a lack of clarity where somewhat of an
12 ambiguity exists between projects. It basically gives
13 the contractor a lack of direction on how he ought to
14 bid the job.

15 I mean we have two projects with the same
16 designer, same company, and they pay for clearing and
17 grubbing differently.

18 CHAIRMAN COWGER: I did want to point out to the
19 Board members that that Osceola County job is in a
20 different district.

21 MR. CONE: That is correct.

22 MR. ROEBUCK: The DOT designed another of Rammy's
23 exhibits that had clearing and grubbing for reworked
24 shoulders and widening. Is that a standard for you?

25 MR. IRWIN: Do you want me to get into our

1 rebuttal now? I will address that.

2 MR. ROEBUCK: You will address that, okay.

3 CHAIRMAN COWGER: If you are ready, you can start
4 with your rebuttal package.

5 MR. IRWIN: I will start with our rebuttal
6 package, Exhibit 2. Under Tab G, in just reviewing the
7 specifications, first off let me state that we believe
8 that there was no error on this project in that it is
9 clear that the contractors do have a clear direction as
10 to how to bid this project.

11 To start off with the specifications, to answer
12 your question that was just asked, the specifications
13 allow the designer to make a decision how they want to
14 pay for clearing and grubbing.

15 It is true that on every job we don't pay for
16 clearing and grubbing the same way. That's true. And
17 that is not only -- that is allowed in the
18 specifications.

19 When you review the specs, say, for instance the
20 first specification provided is the embankment
21 specification. We have highlighted the section here,
22 "Included in the excavation under this section are
23 materials of whatever nature, which are encountered
24 within the required limits of the excavation."

25 And then in parentheses, "except as may be

1 specified to remove under the work of clearing and
2 grubbing."

3 So, from reviewing this specification, it's clear
4 that there is -- there can possibly be an option.
5 Clearing and grubbing may be included separately over
6 in the excavation area and it may not be included
7 separately over in the excavation area.

8 That's specified. That method is specified in
9 plans. The designers have the option of showing the
10 limits of clearing and grubbing on the typical section
11 and then quantifying those limits.

12 If you go over to the rework shoulders, basically
13 you have the same situation there. Everybody can read
14 the spec, but the -- basically as far as basis of pay,
15 in the last page of the spec.

16 It just states that the payments for
17 compensation, there will be full compensation for all
18 work and materials specified under this section, and
19 all work and incidentals to complete the work.

20 So, again, this section specifies that all work
21 that needs to be done in reworking the shoulders is
22 included in the shoulder rework pay item.

23 MR. CONE: What page are you on, Mike?

24 MR. IRWIN: The rework shoulders, 533, 534, 535.

25 I didn't number my individual pages. I just took those

1 out of the spec book.

2 If you move over, though, to the next page and
3 look at the plans on this project that we have already
4 looked at before, the plans will specify the limits of
5 clearing and grubbing.

6 And I didn't -- what I didn't refer to, if I can
7 refer to it now as well, is the clearing and grubbing
8 specifications that basically allows the same thing.
9 If you look at sheet -- or page 117, it's the second
10 sheet there, for the items -- it's a lump-sum payment
11 for the item of clearing and grubbing.

12 If you look at that, the last couple of lines,
13 that last sentence, it's talking about the work
14 included in the clearing and grubbing. Then it says --

15 MR. CONE: Is that your Exhibit 6 that you handed
16 out?

17 MR. IRWIN: Right. That's Exhibit 6. It is
18 talking about what is paid for under clearing and
19 grubbing. That last phrase, "Any other clearing and
20 grubbing indicated or required for the construction of
21 the entire project except for any areas designated to
22 be paid for separately or to be specifically included
23 in the cost of other work in the contract."

24 So, the point I'm trying to make is that from
25 reviewing the clearing and grubbing specification and

1 reviewing the specifications on the other -- for the
2 other pay items, the specifications clearly allowed the
3 design and flexibility to make a decision in how items
4 are paid for. The way they decide that is in the
5 plans.

6 Referring to the typical section sheet 3,
7 specifically the way they determine clearing and
8 grubbing, again, to me this seems clear, is through the
9 limits, showing the limits of clearing and grubbing on
10 a typical section, you know, as shown by -- as shown
11 with the leader from one particular area to another
12 particular area.

13 Now -- then if you look at the quantity, the
14 quantity should be calculated in accordance with those
15 areas that are specifically shown under the limits of
16 clearing and grubbing.

17 I think the quantities are correct, the areas are
18 correct. When you look at it in terms of the
19 specifications, it seems clear to me if you reviewed
20 the index that we just discussed, or the -- not the
21 index, but the details we just discussed, on that same
22 page of sheet 3, you can see the shoulder.

23 The other ones we have highlighted here, where it
24 shows the shoulder reworking and where the regular
25 excavation, or the excavation quantity is, there is no

1 limits of clearing and grubbing shown over that, which
2 would otherwise have been, you know, with the leader up
3 here (indicating).

4 If that had been shown, then the designer would
5 be making the determination to pay for it under
6 clearing and grubbing.

7 By not showing it, he's making the determination
8 to -- that any clearing and grubbing that is required
9 for these pay items would be incidental to that
10 included -- and included in that particular pay item
11 for work, rather than the clearing and grubbing.

12 Now --

13 MR. ROEBUCK: Did you use the same explanation
14 with the other job for the same engineer where he did
15 show clearing and grubbing, yet it was not included in
16 the pay item?

17 MR. IRWIN: Well, you know, what we did in our
18 rebuttal was we had some copies of some other projects,
19 also, where you can see, you know -- there's not really
20 a reason to waste time getting into them. If you do
21 look through them, basically they show that sometimes
22 the limits of clearing and grubbing covers the whole
23 right-of-way. Sometimes it covers only a portion where
24 they anticipate that the actual clearing and grubbing
25 will need to take place.

1 Now, in looking at the exhibits that the
2 contractor proposed, I haven't had time to review
3 through this project, but the first project he wrote,
4 in Exhibit C, C-3, what I would say is that in
5 reviewing this particular project, this is an error.
6 This plan, this set of plans is in error. This is plan
7 number 10250-3522 --

8 MR. ROEBUCK: He should have the clearing and
9 grubbing dimensions aligned on his section.

10 MR. IRWIN: The designer wanted the contractor to
11 be paid, he thought we would need a clearing and
12 grubbing operation from 2522 to 7244 -- I don't have
13 this set of plans in front of me, but I'm assuming the
14 argument the contractor poses is correct.

15 If what he says is correct, then 2522 to 44
16 corresponds to this, what I'm calling the paved
17 shoulder detail. Then, in fact, in accordance with the
18 specifications, he should have shown --

19 MR. ROEBUCK: Clearing and grubbing.

20 MR. IRWIN: Limits of clearing and grubbing up
21 above. It should have been shown. What I would
22 offer is that this job is the one that -- you know,
23 from looking back, you wouldn't -- you wouldn't
24 necessarily see a claim from this because, you know,
25 you're paying for areas that are not shown as clearing

1 and grubbing in the plans. So it's one of those things
2 that really wouldn't come up on the job.

3 Again, I would offer that the set of plans on
4 this project were clear and were -- there was no
5 ambiguity.

6 Now in looking at the second set of plans, that
7 sort of --

8 CHAIRMAN COWGER: Let me interrupt you a second
9 and go back to the typical section for this project,
10 which there's two sheets there immediately ahead of
11 Tab H. One of them shows a typical section, clearing
12 and grubbing as indicated on that typical section only
13 in the areas where there is pavement widening.

14 Correct?

15 MR. IRWIN: That is correct.

16 CHAIRMAN COWGER: Now, on the next sheet where we
17 show the summary of clearing and grubbing, is it agreed
18 that those four areas that are tabulated there are
19 areas where there was pavement widening?

20 MR. IRWIN: Yeah.

21 CHAIRMAN COWGER: So, it is consistent with the
22 typical section?

23 MR. IRWIN: That is correct. The quantity in the
24 summary of clearing and grubbing, that quantity is
25 consistent with the typical section.

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

2 MR. IRWIN: If you look at the other project the
3 contractor presented, it is correct, from the
4 standpoint of the clearing and grubbing.

5 As you see, they have the shoulder rework item.
6 They intended for a clearing and grubbing operation,
7 that that would need to be done over this reworked
8 shoulder area.

9 CHAIRMAN COWGER: I think the Board understands
10 that.

11 MR. IRWIN: The other thing I wanted to offer is
12 on this project there was not a separate operation for
13 clearing and grubbing, as was observed in the way the
14 job was built. The excavation item of work was done,
15 the material was excavated, over on the side of the --
16 bladed off on the side of the right-of-way.

17 Then later the contractor came back and under the
18 shoulder rework item, the plans allowed him to spread
19 that material and flush it out. He spread it out,
20 flushed it out, graded, reworked the shoulders.

21 There was not a separate item of work where the
22 contractor went across the -- through that area.

23 So, that may not be relevant from the standpoint
24 of, you know, the contractor obviously has the -- I'm
25 not saying the contractor doesn't have -- you know, the

1 right to determine how he's going to build a job.
2 That's his right. We're not going to tell him how to
3 do that.

4 But just for your own edification, I wanted you
5 to know there wasn't a separate operation that would
6 have resulted otherwise in monetary damages, if they
7 had equipment, people, manpower, labor out there doing
8 the clearing and grubbing.

9 MR. DEYO: Was it lump sum on this job as
10 Mr. Cone stated?

11 MR. IRWIN: Correct. On the supplemental
12 agreement, we did put not there. We were bringing
13 borrow in. We were extending the shoulder. We did
14 agree that clearing and grubbing was needed. That was
15 part of the negotiated settlement when we negotiated
16 the extra work.

17 That's it. That's all I have.

18 MR. ELLIOTT: I want to add one thing,
19 Mr. Cowger. To your question earlier on sheet 3 of the
20 plans, it's a little hard to see, but in the center of
21 the book it shows, where it says widening detail, right
22 turn lane, that's where you might have been confused
23 earlier.

24 CHAIRMAN COWGER: Let's ask one question about
25 the last four sheets in Exhibit 2. These had are

1 typical section sheets from four different projects.

2 I don't want you to go into a lot of detail to
3 tell me what is on these sheets because I can read
4 them, but what is the purpose of these being in here?
5 What are you trying to depict?

6 MR. IRWIN: We wanted you to, say, look at the
7 3903 job, sheet 2, up in the typical section one, the
8 limits of clearing and grubbing is shown, you know,
9 over a particular area, you know, where they anticipate
10 an operation to be happening, and other areas they
11 don't show it. And the quantities would be determined
12 appropriately based on that. The same thing with the
13 next page, 3583.

14 Our intention here was to show that this is -- it
15 varies on just about every project. Every project you
16 pull may be a little different.

17 It's inherent with this operation. It's inherent
18 with clearing and grubbing that the contractor is going
19 to have to look at the quantity in the plans and look
20 at the limits of clearing and grubbing, and they know
21 to bid according to what is shown in the plans.

22 That was the purpose of including those, is just
23 to show you that it is not done the same on every set
24 of plans. And I don't think that anyone expects it to
25 be. But it is clear enough that, where the limits are

1 shown, that's where we expect the operation to happen
2 and where we expect to pay for it.

3 MR. GRAHAM: Would you agree it's not normally
4 summarized in the plans, the amount of clearing and
5 grubbing, as far as breaking it down on an acreage
6 basis? Isn't that itself a little unusual?

7 MR. IRWIN: Well, no, the projects that I've
8 looked at, most of them had a summary of clearing and
9 grubbing on their -- somewhere in the summary
10 quantities, the summary quantity sheets.

11 I don't -- I'm just going by memory now. I don't
12 think it's always provided.

13 MR. CONE: Well, if I may interrupt, on page 2 of
14 project 3479, we were the prime contractor on that job,
15 and there was no summary of clearing and grubbing.

16 CHAIRMAN COWGER: How was it paid for, by the
17 acre or lump sum? Is not lump sum typical today,
18 though?

19 MR. GRAHAM: Oh, yes.

20 MR. CONE: It's typical now.

21 CHAIRMAN COWGER: I withdraw my question. Are
22 we through with the clearing and grubbing? Who else
23 has got anything to say about the clearing and
24 grubbing?

25 Does either Board member have any questions?

1 I guess I've got to ask this question. Nobody
2 has brought it up. To the contractor, what work did
3 you do that you didn't get paid for? It's bound to
4 come up in us discussing this later.

5 MR. CONE: We did not get paid, in my opinion,
6 for the 10.05 acres of additional clearing and
7 grubbing.

8 Also, one statement that Mr. Irwin made I'd like
9 to take issue with.

10 Mr. Elliott, maybe you can remember this rather
11 vociferous argument we had on the project. Mike
12 referred to -- I will go to his Section G, sheet 3, the
13 paved shoulder detail that shows the excavated turf and
14 topsoil being thrown down the slope and left there.

15 I was required in 80 percent of the areas to pick
16 that material up and haul it off.

17 MR. IRWIN: That's right because it didn't meet
18 the cross slope --

19 MR. ELLIOTT: There was significant wetlands
20 impact. That ditch was very wet.

21 MR. CONE: I have a set of plans here that tells
22 me I can leave it right on the slope and I was not
23 allowed to do that.

24 MR. ELLIOTT: How much did you remove, do you
25 recall?

1 MR. CONE: I never broke it down, but I would say
2 80 percent of the entire surface area of the project
3 I was required to do that over three miles of roadway.

4 MR. ELLIOTT: To rework the shoulder and blade it
5 in?

6 MR. CONE: And physically pick that pile of
7 material up that you see on that slope and haul it off.

8 MR. ELLIOTT: There were two trucks that I recall
9 that were hauled off.

10 MR. CONE: Two truckloads?

11 MR. ELLIOTT: Yes.

12 MR. CONE: No, sir, you are not correct. That's
13 not my recollection.

14 MR. ELLIOTT: That's my recollection. It was
15 moved from one portion of the project to the next just
16 reworking the shoulder to meet template because they
17 used a flatbed.

18 MR. CONE: There were a lot of cases where we
19 moved that material on project, you are correct, but it
20 was a case of loading it in a truck and distributing it
21 along the job, which was not required by specification,
22 in my opinion.

23 The plans that I have there tell me that I can
24 flush that slope with that material and leave it laying
25 on the slope. Now, I was not allowed to do that.

1 CHAIRMAN COWGER: I think we have heard that. My
2 question again, what work did you do that you didn't
3 get paid for?

4 MR. CONE: The work of picking that material up
5 and distributing it somewhere else that I just
6 mentioned, and the fact that we also had to do
7 something with that surface area between the edge of
8 the existing pavement to the shoulder line. Most of
9 it, as I just said, was bladed down the slope,
10 subsequently picked up and hauled somewhere.

11 So, that is the additional costs incurred.

12 MR. IRWIN: But blading it down the slope was
13 part of your regular excavation. That was part of your
14 excavation. You didn't blade from the edge of the
15 excavation to the edge of the right-of-way.

16 You didn't do anything there. You didn't do
17 anything but take this material and flush it back over
18 and roll it in as part of the rework. You didn't clear
19 and grub --

20 MR. CONE: That's what I should have done.
21 That's, in my opinion, what I should have done.
22 I rolled it down the slope. I was told by the resident
23 engineer it couldn't stay there. So, then I had to go
24 back into that ditch line or slope or whatever, push it
25 up, pick it up with a loader and haul it.

1 MR. IRWIN: But as part of your regular
2 excavation, that item was associated -- I want you to
3 understand -- that item is associated with the regular
4 excavation item which would call for disposal of that
5 material if it was in excess.

6 MR. CONE: No, sir.

7 MR. DEYO: You're saying that's included in
8 the --

9 MR. IRWIN: What I'm saying is that was the
10 operation that was done with the regular excavation,
11 the cutting of the material, removing the material,
12 that was the excavation required for the widening. It
13 wasn't a -- in clearing and grubbing, you know, of the
14 area that the shoulder -- reworked shoulders.

15 CHAIRMAN COWGER: Let me say I have think we have
16 heard enough on that. Let me give a little summation,
17 though, of the area for which the contractor is
18 claiming additional compensation.

19 As I understand it now, the only areas that were
20 included in the pay area for clearing and grubbing, the
21 eight-tenths of an acre, is the areas adjacent to where
22 pavement widening was accomplished.

23 The contractor is saying he should also be paid
24 for the areas in which shoulder base construction was
25 done. That's an approximate four-foot strip down along

1 side of the existing pavement or the widening, as the
2 case may be. That he should be paid the areas where
3 reworking of shoulders was accomplished and where the
4 slopes were dressed.

5 In other words, essentially he's saying he should
6 be paid throughout the project for any area where the
7 existing flow was disturbed, which includes shoulder
8 based construction, reworking shoulders, and dressing
9 the front slopes.

10 I'm just trying to -- I'm not commenting on the
11 validity of his claim, all I'm saying is that is the
12 difference in compensation that we're discussing here.

13 MR. IRWIN: When you ask -- if I can just
14 comment. When you asked Rammy what work did they do
15 that they need to be paid for and he said disposal of
16 that material, picking it up and hauling it off, again,
17 I will disagree with Rammy.

18 Under excavation, under that pay item it says --
19 and this is the operation he was doing, excavating that
20 material. It says consists of excavation and
21 utilization or satisfactory disposal of that material.

22 That's the material he disposed of. It is not
23 clearing and grubbing material. It is material that
24 was dug as a result of regular excavation. And the
25 pay -- it includes pay for hauling it off.

1 He answered your question. The only additional
2 cost he had was the cost associated with the pay that
3 he was already paid for under regular excavation.

4 CHAIRMAN COWGER: You're saying the dirt he
5 hauled off was the dirt he excavated from the trench
6 from the shoulder pavement?

7 MR. IRWIN: Correct.

8 CHAIRMAN COWGER: Mr. Cone?

9 MR. CONE: I basically agree with your summary
10 except that it was strictly -- what I filed a claim for
11 was the areas of widening and the area of shoulder
12 rework. Anything that's filled down, further down,
13 I did not ask for that area. It's roughly a ten-foot
14 area, I believe. Ten foot times the length of the job.

15 You know, according to Mike, if the topsoil and
16 the strippings and everything is to be included in
17 excavation, then he's absolutely right. But I think
18 that is the general crux of the argument is whether
19 that area should be paid for as clearing and grubbing
20 or excavation.

21 The last thing I will say, and then I will be
22 quiet, is that in my opinion a plan note should have
23 been added that just said any clearing or stripping
24 removal should be included in regular excavation.

25 CHAIRMAN COWGER: I think we have heard enough on

1 this part of the claim. We are going to move on. We
2 are going to take about a five-minute break.

3 (Short recess)

4 CHAIRMAN COWGER: We are going to go now to the
5 part of the claim dealing with the Value Engineering
6 part of the proposal.

7 In the interest of getting it in the record,
8 I want to set out to be sure that I understand what the
9 scope of the overall work was at this bridge site. You
10 had a pair of existing bridges, one eastbound and one
11 westbound.

12 What it amounted to was diverting the traffic to
13 one of the bridges and replacing a bridge, then
14 reversing that situation, diverting it to the new
15 bridge, then replacing the remaining bridge. Is that
16 what it amounted to?

17 MR. GRAHAM: That's correct.

18 CHAIRMAN COWGER: These bridges were what, 30 or
19 40 feet apart?

20 MR. GARCIA: About.

21 CHAIRMAN COWGER: Just so we can visualize
22 this --

23 MR. IRWIN: I have a set of photographs if you
24 want to look at those.

25 CHAIRMAN COWGER: That's basically all I wanted

1 to find out was what was the scope of the overall work.

2 Okay. I think now it would be appropriate to let
3 the contractor begin his presentation on the VECP.

4 MR. GRAHAM: Just an opening statement. This job
5 was bid on February 26, 1992. The contract was
6 executed on May 6, 1992.

7 We took it upon ourselves prior to the award of
8 the -- the execution of the contract, to meet on a
9 preliminary basis with the DOT. Steve Zendegur and
10 myself met in early April with Mike Irwin and
11 Larry Gay, presented them with our concept of what we
12 proposed for the VECP.

13 We received somewhat of a general agreement with
14 our design concept. We proceeded with that design
15 concept, which basically was replacing the original
16 plans called for drill shafts.

17 We proposed prestressed 18-inch piling, then
18 replacing the design deck was a prestressed slab unit.
19 We proposed a poured in place deck unit.

20 After months of negotiations and resubmittals, we
21 finally withdrew our VECP proposal because of time
22 constraints. The job started June 17th and we finally
23 withdrew our proposal on July 31 in order to timely
24 complete the project, which we were able to do with the
25 original design.

1 The roadblock that we ran into with the VECP was
2 apparently bottom line that FDOT District 7 wanted this
3 job to be a drill shaft job. We believed that maybe it
4 was because it was going to be the first drill shaft
5 job in the district and they wanted to get a feel for
6 what the construction problems may or may not be.

7 We also believed there was a lot of pride of
8 authorship associated with the design, because
9 I think -- and I'm not sure about this -- but I think
10 it may have been the first in-house bridge design done
11 by District 7.

12 We are not finding fault for errors in the
13 original design. We think it was an excellent design.
14 The claim is based on design constraints that were
15 placed on our VECP which were above and beyond the
16 design standards.

17 We have submitted a package here of a summary of
18 seven design constraints that were placed upon us that
19 we felt were over and above constraints that were
20 currently in existence. We probably don't need to go
21 through them line by line those particular
22 constraints, but maybe answer them with the DOT's
23 rebuttal.

24 MR. ROEBUCK: This first item, this vibration in
25 settlement monitoring, there were two old bridges

1 there. They were going to be removed. So, the -- your
2 requirement of some kind of vibration monitoring wasn't
3 to protect anything really other than to keep the
4 bridge from falling in the ditch, right?

5 MR. GRAHAM: The traffic had to be maintained on
6 one of the bridges while the other bridge was being
7 removed. We've done a lot of DOT work on widening
8 structures. We have not seen vibration monitoring on
9 widening structures, it's structures that remained in
10 place, much less structures that got completely
11 removed.

12 And we are also -- the specifications in
13 requiring vibration monitoring read the same for drill
14 shaft work as it does for pile driving work, yet the
15 original design did not have any vibration monitoring
16 required because there is a separate pay item for this
17 work. Yet with our proposal we were required to have
18 that.

19 In fact, as far as that requirement, we
20 constructed one of the bridges with the crane and the
21 drill rig on top of the existing bridge and vibrated
22 the drill shaft casing down on top of the existing
23 bridge and had no problem with settlement or structural
24 integrity of that structure. We had a 70-ton crane on
25 top of it.

1 CHAIRMAN COWGER: But that was installing drill
2 shafts, not driving pile.

3 MR. GRAHAM: That is correct. Certainly a lot of
4 vibration associated with vibrating a steel casing into
5 the ground.

6 CHAIRMAN COWGER: I understand. What was the
7 condition of the -- when you were removing and
8 replacing the first bridge, what was the condition of
9 the other bridge?

10 MR. GRAHAM: We replaced the older bridge first,
11 which was the westbound structure. That was the older
12 one. There wasn't any load limit on the bridge. We
13 didn't do the maintenance records on it. I don't know.
14 It was 18-inch prestressed piling on -- on prestressed
15 slabs. I'm not sure what the date of it was.

16 CHAIRMAN COWGER: Are there any other questions
17 before the DOT begins their rebuttal?

18 I think you've got a good idea, Mr. Graham, to
19 let them come in with some rebuttal, then we will let
20 you all come back, because we need to know a little bit
21 more in specifics what you need to talk about,
22 I suppose.

23 MR. DEYO: You say the existing bridge was
24 prestressed piling?

25 MR. GRAHAM: There's two different bridges.

1 MR. DEYO: The first one you replaced was a
2 prestressed pile structure?

3 MR. ROEBUCK: Sounds like it was the second one.

4 MR. GRAHAM: Fourteen-inch piling, twelve-inch
5 piling. They weren't built at the same time. They --
6 one was built before the other.

7 CHAIRMAN COWGER: But they both were on concrete
8 piling of some sort?

9 MR. GRAHAM: That's correct. I think the
10 originals are of the older bridge (indicating
11 photographs).

12 MR. IRWIN: Right. We have one of both bridges.
13 I don't know if you can see it very well.

14 MR. GRAHAM: The top view is the newer one.

15 MR. ROEBUCK: Your proposal that you made was in
16 the intent of the requirement of VECP, that it saved
17 you and the State some money and it was a different
18 design than was in the plans. You weren't just
19 me-tooing something, you changed the foundation,
20 changed the deck?

21 MR. GRAHAM: That's correct.

22 CHAIRMAN COWGER: We are ready for DOT.

23 MR. IRWIN: Okay. In going through my little
24 package here, I have three reasons that I believe this
25 claim should be denied.

1 The first reason is based on the specifications,
2 in my Tab B, under the first part of this, basically
3 just discusses the VECP.

4 But on the second page, page 18, I'm underlining
5 there that the -- on the specification, "Pending
6 execution of a formal supplemental agreement,
7 implementing an approved VECP, the contractor shall
8 remain obligated to perform in accordance with the
9 terms of the existing contract."

10 The contractor hasn't offered as an argument so
11 much, but my point is the contractor remains obligated
12 to perform in accordance with the existing, the terms
13 of the existing contract.

14 The project was built -- the project was built as
15 the contractor bid the job and as he was contractually
16 obligated and agreed to build the job when he executed
17 the contract. There were no damages incurred,
18 therefore, no recovery should be allowed.

19 Also, on page 19, in the specifications, on the
20 very next page, it says that, underlining again, "The
21 Department shall not be liable for any VECP development
22 costs in the case where a VECP is rejected or
23 withdrawn," as is the case of this particular VECP.

24 Again, the first item of the contractor's claim
25 is to recover development costs which are specifically

1 prohibited in the specifications.

2 The last point of the specifications I wanted to
3 bring out, "The engineer shall be the sole judge of the
4 acceptability of a VECP and of the estimated net
5 savings in construction and/or collateral costs from
6 the adoption of all or any part of such proposal."

7 That pretty much stands as it is. The engineer
8 is the sole judge of that, thus the philosophy of VECP.
9 In that case, therefore, the claim is actually a
10 violation of the specifications and should not be
11 approved.

12 Now, the second reason would be the design that
13 I believe that this should not be approved as the
14 design, is not equal to the DOT.

15 The Department selected design criteria when we
16 began, initiated the designing of this bridge. And we
17 chose to use drill shafts for the main reason of
18 obtaining embedment in the rock.

19 From the pictures, the point I wanted to bring
20 out from the pictures is you see crutch bench, a lot of
21 cracking up on the deck. From the photographs, you
22 know, you can see -- we believe that this was a result
23 of the vibration damage on the structure from long-term
24 vibration of the bridge.

25 And again, the existing structure, the existing

1 material out there was basically a soft clay, muck
2 layer over a hard rock layer. And the existing piling
3 were driven down to the hard rock layer, probably
4 driven when they got to the hard rock layer.

5 You know how you used to drive piling, you could
6 beat on them and beat on them, and then -- they are
7 probably seated right at the very top of the hard rock
8 layer.

9 And what we wanted to provide was a form of
10 fixity with embedment of the foundation of the
11 structure. That's the reason we chose to use the drill
12 shaft so that we could drill down and get into the
13 rock.

14 Now, again, the vibration, this was more of a --
15 we were concerned with the vibration and with the pile
16 driving operation and the energy that would be put into
17 the soil, and we were concerned with how that would
18 affect the bridge that was maintaining traffic.

19 If we, you know -- if we were a little
20 conservative in that respect, then I think it was
21 warranted from the standpoint that you need to
22 understand State Road 60 is the main traffic, the main
23 road between Bartow and Tampa. A lot of industrial
24 area for the fertilizer industry.

25 If that happened, if that -- if that did happen,

1 as far as if this operation affected the other
2 structure, we would just have to close the whole
3 roadway and detour traffic around until we could get it
4 resolved.

5 Again, in the vibration -- from the vibration
6 standpoint, if that was somewhat conservative, I feel
7 like it was more than warranted due to the fact of what
8 type of damages a catastrophic failure would have had
9 to the traveling public.

10 Now, the contractor stated that our review of
11 their VECP was arbitrary and capricious, which would
12 indicate that we reviewed it on a whim using an impulse
13 and individual judgment in arbitrarily denying it.
14 I pulled those words out of Webster.

15 This is not true. The Department had nine
16 individual groups review the VECP. In Tab D -- I've
17 included some of the copies of the comments we had in
18 writing.

19 I'm not trying to confuse you by jumping around,
20 but in Tab A is where I have my outline that I'm
21 following.

22 But, again, we had reviews from the district
23 design office -- and I won't even waste time going
24 through here, but we had nine individual reviews. Six
25 of those reviews was of a design-type nature, either

1 structures or geotech. The other three reviews were of
2 constructability.

3 Now, I will tell you that the three
4 constructability reviews had no objection to this from
5 a constructability standpoint. We felt we could build
6 it.

7 Six of the nine reviewers that were -- like
8 I say, they were all design-type reviewers,
9 geotechnical or structures -- six of the nine reviewers
10 recommended either denial in their review comments or
11 they noted the design discrepancy provided in the
12 contractor's design.

13 You know, we did not deny the VECP arbitrarily or
14 capriciously. We had, again, from every design unit
15 that we had from the central office, district office,
16 structures office, even the State construction office
17 all had recommended against the approval -- the plan
18 that was submitted.

19 We chose to qualify a response to the contractor
20 instead of rejecting it. We qualified the response and
21 required him to predrill for embedment and then grout
22 the predrill down into the hard rock to provide the
23 same embedment that the bridge was originally designed
24 out of and to grout the holes around the piling.

25 The contractor withdrew the requirement.

1 Now, one of the other points the contractor made
2 was the scour. We designed it basically scour proof at
3 all bents. That was one of the points the contractor
4 made was that the end bents are not normally designed
5 for scour.

6 Again, the design requirements are listed on the
7 plans. The basis was taken there off of those.

8 Any additional requirements that were placed on
9 the contractor for their plan was solely due to their
10 method of construction, i.e., some additional MOT
11 requirements and things like that that the purpose was
12 to make sure that the new design meshed with the intent
13 of the project.

14 Now, the third reason that I said I was going to
15 get into is costs. We did a cost estimate for the
16 VECP. It's in Tab D. It's about eight pages from the
17 back of Tab D.

18 Now, from reviewing the costs, our estimators
19 calculated that the savings should be more around
20 119,000 rather than the, what, 56,000 or some-odd that
21 was provided by the contractor. Okay. This was done
22 in reviewing the VECP.

23 Now in February of 1995 we see the contractor's
24 claim. If you've had a chance to look at his claim --
25 I would ask you to flip over to my Tab C, the second

1 page of Tab C.

2 Now, I will give you a chance to look at that
3 summary of cost. The first cost is geotechnical design
4 of his development; second cost, 28,000. I believe
5 that's half of the VECP savings. The other is 78,000
6 in loss of VECP profit.

7 Now in February of 1995 we see the cost detail in
8 the claim, and we see the contractor claiming that he
9 had an anticipated additional profit of 78,000 that he
10 was not willing to share with the DOT at the time of
11 the submittal of the VECP.

12 This not only shows the DOT estimate of savings
13 was accurate, but it also shows the contractor's
14 proposal was a poor faith effort to take advantage of
15 the VECP system by obtaining this, by keeping a hundred
16 percent of additional profits of 78,000, which again we
17 anticipated that he was going to have with our review,
18 but he was not willing to -- and with his review to
19 offer, as part of the VECP.

20 Now, the -- from a cost standpoint there was no
21 value. You're looking at what we lost in the design of
22 the -- the decrease in design quality of the bridge, we
23 did not feel that there was value there either from a
24 cost standpoint of just the 28,000 to approve it.

25 So, the other issue that I wanted to go ahead and

1 rebut was on July 17th -- and I included that in Tab D
2 as well -- but on July 17th there was a meeting. I've
3 got a copy of everyone that attended. I was there
4 personally myself.

5 This is in reference to a comment that -- the
6 reason I'm bringing this up is in reference to a
7 comment that Chris O'Brien made -- I don't have it in
8 my package, but I think the contractor submitted it.
9 It is a letter -- now keep in mind from March -- is
10 that when your original submittal came in?

11 We started talking then from April to June, had a
12 couple of meetings. This meeting was sort of the final
13 meeting on July 15th, the final meeting we had after we
14 had had two or three meetings to talk about the
15 difference in design.

16 Well, the letter that the contractor brought out
17 in his package was a letter that was written two months
18 after this meeting. And it is irrelevant to the VECP
19 as far as -- the letter is a request that's not even a
20 part of this -- it is a request for --

21 MR. GRAHAM: Which letter are you talking about?

22 MR. IRWIN: The letter you had in your addendum
23 where you said you had an ax to grind. That particular
24 letter was, you know, not -- that didn't refer -- that
25 was not part of the VECP. That was another thing.

1 But the comment that was at the bottom of that
2 letter from the resident engineer at the time was that
3 he had discussed with me, and that I had asked him to
4 do some additional review, and the comment that was
5 made there was about the engineer of record having an
6 ax to grind. That letter came, like I said, two months
7 after this meeting in July.

8 Now, at this meeting in July, the contractor's
9 designer, Steve Zendegur assaulted the professionalism
10 and competence of the engineers in the shop. That was
11 the reason for that.

12 We had a very heated meeting in our office.
13 I think all of us came away feeling like we had an
14 assault on our designer. And to be frank with you,
15 when that request came in, we wanted to make --
16 I wanted to make sure as the DCE that we were treating
17 the contractor fair and every opportunity was being
18 provided for the drill shafts.

19 That was the reason that comment came about, to
20 be honest, to be perfectly honest with you. I wanted
21 to make sure that there wasn't any hard feelings, that
22 there weren't any hard feelings lingering around from
23 that meeting where we had -- I don't know any way to
24 describe it but an assault on the designer's
25 competence, as far as their design person and our

1 design.

2 CHAIRMAN COWGER: That came out during the
3 meeting?

4 MR. IRWIN: Yes, during the meeting in July.

5 CHAIRMAN COWGER: It's not in any correspondence,
6 though?

7 MR. IRWIN: No. There's minutes of that meeting,
8 or there's some notes about the meeting.

9 MR. GRAHAM: Do you remember any details as far
10 as what was assaulted? I was at the meeting --

11 MR. IRWIN: It was basically the competency of
12 our designer.

13 MR. GARCIA: There were questions raised.

14 MR. GRAHAM: We never questioned the original
15 design. It was fine.

16 MR. GARCIA: The issue to remember here is that
17 there were a number of people here who reviewed the
18 original design as well as the VECP. This was never a
19 one-man review, as Mr. Irwin pointed out.

20 So, I felt at that point, to be honest with you,
21 if there was any question about the competence of the
22 designer, that basically there were six or eight
23 individuals that were being questioned.

24 MR. IRWIN: As far as that particular issue,
25 again, you know, I just wanted to address that because

1 I know it's going to come out. It's in the
2 contractor's documents. That is the reason for the
3 memo. In talking to the resident engineer, we recently
4 had a very hot meeting.

5 I just wanted to make sure that the contractor
6 was being treated fairly, that we were reviewing it
7 fairly. I wanted to be sure about that. So, that's
8 why we had the initial review.

9 Again, Pepe here was the designer. He didn't
10 sign the seal as engineer of record, but he did all the
11 design under the supervision of the engineer of record.

12 That was also the reason I submitted this is just
13 to show you that during the course -- this is the
14 package with the Sverdrup letter on the front.

15 This is just general correspondence from an
16 engineering company who we hired to do a peer review of
17 our design while we were designing it. They do note
18 that it -- that there is slightly conservative, they
19 agree with the -- with the design criteria that was set
20 and the design.

21 There is also constructability and design
22 reviews, design phase reviews that were done.

23 Just put copies of these things in here just to
24 show you that in the purpose of this Exhibit No. 5 it's
25 just really to show you that we -- during the design of

1 the project it wasn't just, you know, some -- a
2 flippant disregard for whatever the criterias are in an
3 attempt to overdesign something that an earthquake
4 wouldn't even knock down.

5 I know what the contractor tends to portray, that
6 was an unreasonably overdesign. And I just wanted to
7 show you that's not the case. We went through the peer
8 reviews and phase reviews with the design on that.

9 The other point that I wanted to bring out was
10 the plan sheet. You know, at one time it was contended
11 that the requirement we were making on the contractor
12 to preform and place the piling was something that was,
13 you know -- I think the insinuation was, at the
14 meeting, was that requirement was really just something
15 to discourage them from doing a VECP, to encourage them
16 to forget it and withdraw it.

17 I wanted to show you that wasn't -- the purpose
18 of this is to show you this -- that wasn't just
19 something that we thought up and imposed on the
20 contractor to be difficult or to be hard with him.

21 During the review, this is -- the little sticky
22 note that was attached to it when it was submitted to
23 us, the FYI, this is from Larry Sessions, who is the
24 central office designer. He sent this to us to assist
25 us with our review of the plans, or the of VECP.

1 This particular type of plan where they -- where
2 they predrill down into, to some particular level into
3 hard rock, then grout, this is something frequently
4 done in other parts of the state. I don't know that
5 it's been done here, but it's done in other parts of
6 the state frequently. It's not just some off-the-wall
7 requirement to make it difficult.

8 From what I understand, this is typically used --
9 and again I'm not a structural designer myself, that's
10 why Pepe is here -- but this is typically used when you
11 would be going into a very hard rock area where you
12 would predrill the opening so that you could get the
13 required embedment.

14 Now, from the contractor's document, I was just
15 reviewing that. The other projects that he used that
16 showed predrilling are -- I know the predrilling -- one
17 specifically, one of those jobs we did have a
18 contingency for predrilling. We had one where we had a
19 contingency that really wasn't a contingency. It was
20 basically an error in the plans that we had to resolve
21 with the contractor on that job.

22 Two of the jobs that I know of that the
23 contractor presented are other jobs that we had -- the
24 other job we had preformed pile holes on, those in
25 particular really wouldn't be relevant to this case

1 because the material -- you would have to look at the
2 geotechnical reports.

3 It wasn't as dense, the material. We were able
4 to drive the piling in those areas without any
5 predrilling.

6 MR. GRAHAM: Which job is that?

7 MR. IRWIN: The 580 jobs.

8 MR. GRAHAM: You didn't do any predrilling on
9 there?

10 MR. IRWIN: No.

11 MR. GRAHAM: My brother-in-law brought a
12 brand-new drill out there and drilled the holes.

13 MR. IRWIN: I'm talking about the job that Nelson
14 did.

15 MR. GRAHAM: That's not in this package.

16 MR. IRWIN: I may have had the wrong job.

17 CHAIRMAN COWGER: Let me cut that discussion off.
18 I'm not sure that's pertinent. I do want to ask you a
19 question about this sheet. It's DOT Exhibit 5.

20 My question is, looking at that detail, right in
21 the center of the sheet, the detail of pile
22 installation, this bridge is in the Keys, one of the
23 Keys replacement projects. It was built back in the
24 '80s.

25 I wonder if anybody knows how much over-burden

1 there was. It shows over-burden depth varies.
2 I wonder if there was anything significant about
3 over-burden there or not.

4 MR. IRWIN: This was just sort of provided like
5 as a typical. We've talked to several people up in
6 structures. This is sort of a -- in south Florida,
7 this is typical. They have a lot of hard rock down
8 there. This is something they were typically doing all
9 around south Florida, to get embedment into hard rock.

10 MR. GARCIA: I can shed some light on that. The
11 depth of over-burden would not be sufficient to leave
12 you with adequate stability for the pile in case of
13 scour. And that's why you would have to embed it
14 further into the rock. And to do so, you would
15 required the sand cement grout.

16 CHAIRMAN COWGER: The purpose of this drawing is
17 really to show that the grout had to be sand cement?

18 MR. GARCIA: And that it is something that is
19 commonly done for the type of subgrade conditions that
20 we had on the English Creek site.

21 CHAIRMAN COWGER: Okay.

22 MR. CONE: Mr. Chairman, the borings are here if
23 you would like to see how much over-burden was there.

24 CHAIRMAN COWGER: I was asking about the job in
25 the Keys. I would like to see that, too, if you will

1 pass it around.

2 MR. IRWIN: The comment I made, I looked at the
3 project and I saw 580 there. I assumed we were talking
4 about the west bridge. If I had the structure wrong --
5 I haven't reviewed that one, so, I would withdraw that
6 comment.

7 MR. GRAHAM: While we're talking on existing
8 bridges that are similar to this design constraint that
9 was placed on us, I mean DOT has to go down to Monroe
10 County to find a typical example of what they say are
11 typical soil borings associated with this job in
12 District 7.

13 In my exhibit, I've shown three different jobs
14 within the district that required predrilling in the
15 hard rock that did not require any grout. There's
16 currently a job now going on on Buffalo Avenue across
17 the bypass canal.

18 I don't know if you're familiar with the rock in
19 the bypass canal, but it's very hard, very difficult to
20 drill. They are predrilling all of those holes but
21 they are not doing any grouting. That's Hunter's job
22 on MLK. That job is under construction.

23 Now, these 580 jobs, I put them in there to show
24 you that they did not require ten foot of penetration
25 below the 500-year scour. And there was also very hard

1 rock drilling associated with that job, and there was
2 no grouting required on these jobs.

3 These are all District 7 jobs.

4 Granted, maybe down there in District 6 in Monroe
5 County you might need to grout, but we have not seen
6 any jobs in District 7, and we've done preformed pile
7 holes in District 7 and haven't done any grout.

8 On 580 this job right here was predrilled in the
9 rock, but there wasn't any grouting associated in that
10 project (indicating photograph).

11 MR. CONE: How many piling were on that job, a
12 hundred?

13 MR. IRWIN: You are talking about performing the
14 pile hole, setting the pile, driving the pile maybe
15 five or ten feet or so?

16 MR. GRAHAM: Well, this job, maybe six inches.
17 The stability factor is in the design work. Our
18 designer did not require the grouting in order to
19 maintain and allow stability. He was satisfied with
20 the existing conditions out there to provide sufficient
21 lateral stability for his design.

22 MR. GARCIA: We obviously had a difference of
23 opinion in the design criteria. What we wanted to do
24 was to provide an equal design to what we had there.

25 And as Mr. Irwin mentioned earlier, we had a

1 scour proof design. And that also addresses the issue
2 of the end bent, whether or not we required to embed
3 those in the rock as well.

4 The only reason behind that, even though the
5 design contradictions as indicated in here on Exhibit 3
6 shows that was not part of the criteria, our plans show
7 an embedment for the end bent shafts about the same as
8 for the others.

9 And the intention behind that was that no matter
10 what happened, if we lost the abutment that protected
11 the area there, we still had all of the shafts scour
12 proof. So, the concept there was to provide the same
13 as what we had designed. No more, no less, just the
14 same.

15 Now, I may be able to touch on a couple of
16 comments that were made in this Exhibit 3 here.

17 First of all, by the way, that was not our first
18 design job in District 7, Bob, that was our second.
19 But I will say that the staff there had considerable
20 design experience in bridges and/or other type
21 structures.

22 MR. GRAHAM: I didn't bring that up to question
23 the design other than the pride of authorship that
24 might be associated with it.

25 MR. GARCIA: The reason was our design was better

1 for scour. By the way, if I may at this point, in your
2 7-A, for that matter -- and I do not have direct
3 knowledge as to what you wrote there is accurate or
4 not, but I will assume it is, but it says, "VECP must
5 result in savings without requiring essential
6 functions," and you list those in there.

7 I made me a quick list here. As far as the
8 safety, and I'm going by that list, there is really no
9 difference between a properly designed pile or shaft
10 for that site.

11 As far as the surface, I don't see a difference
12 either.

13 As far as the life expectancy, by looking at
14 those pictures that we submitted, and we have in the
15 DOT we have documentation of the stage of deterioration
16 of those bridges that were basically a design identical
17 to what you were submitting. In other words, a pile
18 design to a point right about the top of the rock,
19 which is what you were submitting.

20 MR. ROEBUCK: I thought he was going to drill in
21 the rock, and I wondered how old those bridges were.

22 MR. GARCIA: They were not -- the original VECP,
23 by the way, the original VECP proposal did not call for
24 drilling into the rock. It was basically going to the
25 top of the rock and trying to drive until you couldn't

1 drive anymore.

2 We were concerned with pile cracking, et cetera,
3 et cetera. Those pictures are a good example of the
4 degree of deterioration that that type of structure
5 had. So, therefore, with respect to the life
6 expectancy, I see a direct benefit for drill shaft
7 foundation.

8 Reliability, again, I see a direct improvement
9 for a drill shaft foundation because of that.

10 On the economy in the long term, I see less,
11 maintenance, in terms of ease of maintenance with a
12 drill shaft foundation. We only had two foundation
13 components going to the cap, and in the case of
14 pilings, you have multiple, many more components.

15 Therefore, you do have more maintenance problems
16 associated with it, and with the aesthetics part of it,
17 I do believe that less, you know, of components into
18 the water, in addition to hydraulics, by the way, is a
19 lot better design. So, our design, there is no
20 question in my mind, that it addressed many of those
21 issues in a positive manner.

22 Now, there was a couple of other things that were
23 mentioned. One had to do with our design being overly
24 conservative. And Mr. Irwin mentioned that one review
25 by Sverdrup, which was provided at the 90 percent

1 stage, which by the way was in addition to in-house
2 design we did as well as the structures office reviews,
3 and that was included in the exhibit package, 5-A.

4 On the last page, on the design calculations, in
5 that letter by Sverdrup, it specifically addresses the
6 substructures units. "For the substructure unit plus
7 independent checks."

8 In other words -- let me start at the beginning.
9 "Results from the review of the design computations for
10 the substructure units plus independent checks verify
11 that the design is acceptable and slightly
12 conservative."

13 It specifically addresses the substructure units
14 which include the drill shafts and the cap. That's
15 your substructure.

16 So, there is -- this is a totally independent
17 design, by the way, review. Totally independent. It
18 is not mentioned there as being overdesign.

19 There is an issue, also, that was mentioned in
20 Exhibit 3 of the seven and a half foot embedment. That
21 was covered in the design calculations that I assume
22 Mr. Cone got a copy of. I can provide that in here,
23 but I wrote it down on my notes, and I'm quoting, "This
24 was a requirement for axial load. That seven and a
25 half foot embedment appears excessive."

1 This is DOT design now. "It is necessary
2 considering the variation of load counts in limestone
3 and the presence of circulation lost in sand layers
4 between the rock layers. Seven point five feet will
5 ensure adequate friction capacity is obtained since the
6 majority of capacity is in friction."

7 The reason why I'm quoting that to you is that we
8 were working directly with the geotech consultant on
9 the job and these decisions were being made to address
10 typical design concerns that you encounter when you do
11 a design.

12 For one last item that I want to mention, with
13 regards to -- that the calculations, again going back
14 to the end bents, calculations show that there was no
15 need to consider scour.

16 Well, that is the same as what you do with any
17 type of design. I will give an analogy. You design a
18 column and you come up with eight number ten bars in
19 that column. You have a number of columns in other
20 things.

21 It may be that when you're doing the detailing of
22 that component, that it -- because the detailing
23 requirements are to be more practical or uniform you
24 change that to be instead of whatever I said, add a
25 couple of bars perhaps. You do that normally.

1 That's exactly what we did with the end bents in
2 our case. We recognized that there was no need to
3 scour design those end bents, but we said for a couple
4 of extra feet that we have to drill, go ahead and do
5 it, you have uniform design, you have scour proof
6 design.

7 So, that was where we were coming from at the
8 time. And that's about all the additional comments
9 that I have at this point.

10 MR. CONE: May I make a comment?

11 CHAIRMAN COWGER: Yes.

12 MR. CONE: First of all, I take some umbrage at
13 the allegations that Mr. Irwin made about us attacking
14 the design of the DOT. I don't think we ever had a
15 problem with Pepe's design. Now, we may have had a
16 problem with the review process of our design and not
17 agreed with him on that.

18 Pepe has gone to great lengths to defend his
19 design today, which personally I don't think that has
20 anything to do with the issue at hand. We just feel
21 like we gave a design that would have worked, and it
22 was rejected by the DOT.

23 Along the same lines, you're showing us a picture
24 of a bridge that's 30 to 35 years old and trying to
25 tell us that you're worried about that design. Well,

1 those are 14-inch pilings. Nobody really knows where
2 those piling were.

3 I don't know how we can draw an analogy from a
4 35-year-old bridge to the design that we were going to
5 use this time.

6 Mike, you mentioned the cracks in the bridge in
7 referring to one of those pictures. I would submit
8 that those are reflective cracks through asphalt that's
9 been overlaid, and that you really can't tell what the
10 structural integrity of that bridge is in the first
11 place.

12 Am I -- I don't know if I was in that particular
13 meeting or not. There were several that I was in. Do
14 you two recall assaulting the designer?

15 MR. GRAHAM: Steve has been accused of it.
16 I would like to hear his version of it.

17 MR. ZENDEGUR: I don't recall ever saying that
18 the original design was bad or wrong or conservative or
19 anything like that. I don't remember assaulting the
20 original design at all.

21 MR. DEYO: In the processing of the VECP, the
22 comments that came back from DOT, didn't reject your
23 submittal, as I read this? They were so overbearing or
24 whatever, that would require changes in your proposal,
25 that you all withdrew your VECP in the interest of

1 time, I guess? That's the way I read it in DOT's
2 exhibits and in your exhibits?

3 MR. GRAHAM: Correct.

4 MR. DEYO: They didn't reject it, but the review
5 comments were back to you for modifications in your
6 design to make it equal to the original design in the
7 Skyway area, for one, the foundation fixity, and in the
8 life or safety of the structure, but the required
9 modifications caused you to withdraw that proposal?

10 MR. GRAHAM: That's correct. For that matter, we
11 liked the cast-in-place slab better.

12 CHAIRMAN COWGER: You know, if you look at this
13 photograph right here, it's very obvious those were
14 precast slabs, looking at all those longitudinal
15 cracks. Those were the old fashioned precast slab.

16 MR. ZENDEGUR: It's not built anymore, and
17 I don't think we want to sell precast slabs here.

18 MR. GARCIA: The pictures in there do show a
19 considerable maintenance that had to be done to the
20 substructure components.

21 MR. IRWIN: The purpose of that was just to show
22 you the two bridges side by side.

23 CHAIRMAN COWGER: I think we are kind of off on a
24 tangent there because it's very obvious that those
25 piling that were driven 35 years ago, some of them may

1 have even been conventionally reinforced. You didn't
2 have the driving criteria that you have today. There
3 are a lot of things different.

4 Anyway, let me ask you a couple of questions
5 while I have you stopped. In all these reviews made of
6 the VECP, was there a review -- I didn't see anything
7 in here that says that -- was there a review made in
8 the Tallahassee structures office of DOT?

9 MR. IRWIN: Yes.

10 CHAIRMAN COWGER: I couldn't find it.

11 MR. IRWIN: We had --

12 MR. GARCIA: I can address that. There is a
13 mention of the people involved in that. The
14 construction office did send me a letter.

15 MR. IRWIN: There is a letter from
16 Charles Goodman. One of the things Charles does when
17 he does his review is he goes down the hall and gets
18 with someone from Jerry's office in structures and has
19 them look at it.

20 If you will notice, Charles in his letter is
21 mentioning things other than just construction,
22 constructability type.

23 CHAIRMAN COWGER: I can look at that.

24 MR. GRAHAM: I would like for you to look at
25 Charles' letter. This is a shotgun rejection.

1 MR. DEYO: Behind Tab D. It's Cone D-7 at the
2 top.

3 MR. GRAHAM: Charles recommended the proposal be
4 rejected. He didn't say that, you know, we should
5 modify it. He wanted it to be rejected. Item 5 in
6 Charles' letter is that existing buildings in close
7 proximity to the structures may be damaged. There
8 aren't any buildings around that building for a mile.

9 MR. ROEBUCK: They made the issue of vibrations,
10 he thought there must be buildings around it.

11 MR. GRAHAM: They are making specific reasons for
12 the thing to be rejected and there aren't any buildings
13 around that project. They let people who didn't know
14 anything about this look at this.

15 CHAIRMAN COWGER: Let me ask you another
16 question. In the original design of the structure,
17 it's probably in here, it's maybe been said, but let me
18 make sure I understand. Were piles considered?

19 MR. GARCIA: Yes.

20 CHAIRMAN COWGER: Why were they rejected in the
21 original design?

22 MR. GARCIA: On the basis of the geotech
23 consultant's recommendation, our concern for vibrations
24 to the adjacent structure, and because a drill shaft
25 design provides a better scour design for that site.

1 CHAIRMAN COWGER: So, it's vibration during
2 construction?

3 MR. GARCIA: Scour design requirements. And
4 I will add, too, and it is documented in there, that we
5 were concerned about the energy necessary to drive in
6 the hard material that is not only the rock itself in
7 there but material in some cases above the rock.

8 And we were concerned about cracking of those
9 piles, et cetera, which would, of course, have a
10 negative impact on the life service of that structure.
11 Those were the major items.

12 CHAIRMAN COWGER: Okay.

13 MR. GRAHAM: Gene, if I could --

14 CHAIRMAN COWGER: Let me ask a question, and it
15 may direct what you want to say. In the
16 counterproposal, you might say, that Cone made, they
17 agreed to install the piling to a minimum tip elevation
18 of plus 35 in the intermediate bents.

19 In order to do that, wouldn't they have had to
20 drill? Wasn't that the understanding or not? I'm
21 looking at your July 25, 1992 letter from Cone to
22 Larry Gaddy.

23 MR. GRAHAM: What is your question?

24 CHAIRMAN COWGER: In order to get those pile tips
25 down to an elevation of plus 35, which my understanding

1 is five to ten feet somewhere below the top of the
2 rock, would it not have been necessary to predrill the
3 holes?

4 MR. GRAHAM: Yes. Included in our proposal was
5 an item to preform all the holes for the piling.

6 CHAIRMAN COWGER: At that point in time, does the
7 vibration in driving through the overlying soil go
8 away?

9 MR. GARCIA: No.

10 CHAIRMAN COWGER: Why not?

11 MR. GARCIA: At that -- if they predrill, yes,
12 but there were two issues with the predrilling, keep in
13 mind. It's not just drilling, but it's a sand cement
14 grouting.

15 CHAIRMAN COWGER: We're not talking about the
16 grouting. We're talking about the statement that you
17 made that if you drove the pile through the overlying
18 material, the limestone, that you would get vibration.

19 MR. GARCIA: You cannot exclude that. Let me
20 give you the reason for that. If you predrill for a
21 pile, you might as well just drill and do the cast in
22 place of the drill shaft and you eliminate the problems
23 and concerns that the State has by grouting with sand
24 cement, which we have done.

25 It's been giving us problems. How to do that is

1 a major problem. It's not an easy thing to grout sand
2 cement under water.

3 Again, we did qualify our response to the VECP by
4 saying at one time or another during this process that,
5 go ahead and submit to us what is your drilling,
6 predrilling and grouting procedure and we will review
7 it and go forward.

8 So, that was never rejected as an option.

9 What we did not agree to was just predrilling,
10 which, yes, it does take care of the vibration problem,
11 but you still have to look at the other issue. How do
12 you grout? And you cannot just use sand.

13 MR. GRAHAM: In the last letter we got from you
14 all, you said the vibration was an ultimate concern,
15 yet we were still willing to predrill. The last letter
16 from Larry Gaddy said that the vibration problem was
17 the ultimate concern, yet we were willing to do the
18 predrilling.

19 MR. DEYO: On a predrill, where you had to
20 predrill your pile holes, you still have to drive for
21 the fixity of the pile?

22 MR. ROEBUCK: No.

23 MR. DEYO: You would propose a combination to
24 drill to tip elevation and then grout the entire --

25 MR. IRWIN: That's correct.

1 MR. GARCIA: Yes.

2 MR. ZENDEGUR: In the design it was proposed and
3 the VECP did not require a fixed column base in the
4 piles. It was designed to have a pinned base, which is
5 a viable structural system.

6 MR. GARCIA: Which we have a difference of
7 opinion about.

8 MR. ZENDEGUR: I wouldn't walk in too many
9 buildings then because I know of a lot of them that are
10 built with pin connector bases.

11 MR. IRWIN: There's a big difference in the
12 original design and his design, big difference.

13 CHAIRMAN COWGER: The drill shaft design had a
14 minimum of seven and a half feet embedment into the
15 limestone of poured concrete. So, that gave you a
16 fixed end design?

17 MR. GARCIA: Correct.

18 MR. IRWIN: From the standpoint of maintenance --

19 CHAIRMAN COWGER: And what we are talking about
20 over here now is that if you don't install either the
21 pile or the drill shaft some distance into that rock,
22 and grout it somehow or other -- and let's not talk
23 about how we are going to grout at this point -- that
24 you don't have a fixed end, you've got a pinned end, is
25 that correct?

1 MR. GARCIA: Correct.

2 CHAIRMAN COWGER: Now the discussion is I think
3 over here that you're saying there are a lot of
4 structures out there that do not have the foundation
5 design with the fixed end.

6 MR. DEYO: He said buildings.

7 MR. ROEBUCK: Buildings.

8 MR. ZENDEGUR: Buildings. We have a structural
9 frame that we have designed with the connections to the
10 piles, the cap. And that was, by the way, the reason
11 for the cast-in-place deck was to create a frame
12 structure.

13 CHAIRMAN COWGER: Okay.

14 MR. GARCIA: I would have to look and review the
15 design of the building, what kind of additional
16 foundation components you have, if you have a slab tied
17 into it, et cetera, et cetera, to see how the whole
18 thing works.

19 MR. ZENDEGUR: The design considerations are for
20 pin connections at the base of the columns. You can
21 look at any prefab metal building and that's how it is.

22 MR. ELLIOTT: Just a real quick point. I didn't
23 have much to do with the VECP, but the specs clearly
24 say the engineer has that option. And if our engineer
25 didn't agree with the fixity versus the pinned, then it

1 seems kind of clear, but I may be missing something.

2 MR. ZENDEGUR: I have a question. I would like
3 to know how many of the reviewers were structural
4 engineers and actually reviewed the structural
5 calculations because I haven't seen any evidence of
6 that in any of the letters that are in the DOT's
7 documents.

8 MR. ELLIOTT: This one was. Our structural focus
9 is from Bud Ingram. He had Mr. Clark Williams review
10 it. He is a structural reviewer.

11 MR. ZENDEGUR: What does it say, though?

12 MR. ELLIOTT: Recommend we not accept it.

13 MR. ZENDEGUR: Because the piles don't have
14 fixity at the base and because the cast-in-place deck
15 cost more. He doesn't say that the structural system
16 is not adequate.

17 MR. DEYO: I think the point I made earlier, they
18 didn't reject it, they just put some requirements on
19 you and you withdrew it.

20 MR. ZENDEGUR: They basically changed it.

21 MR. DEYO: The impact of the requirements that
22 came out of the DOT review got to you on a time factor.

23 MR. ZENDEGUR: That may be a whole -- this isn't
24 the place, but the VECP --

25 MR. DEYO: We can belabor that point on and on on

1 disagreement on structure type until tomorrow at this
2 time.

3 CHAIRMAN COWGER: We probably could.

4 MR. CONE: We felt too many constraints were
5 being placed on us, time was becoming a factor. We
6 couldn't save ourselves or the DOT enough money to make
7 it worthwhile, and we basically said, piss on it, let's
8 go build the job.

9 MR. DEYO: I understand that.

10 MR. ROEBUCK: Let me ask you. VECP is an
11 interesting thing to me and it has been for ten years
12 to me, but I don't think we're getting our money's
13 worth out of it. Are we doing something wrong?

14 MR. DEYO: I will talk to you afterwards.

15 MR. ROEBUCK: We are not getting many of them
16 accepted.

17 MR. IRWIN: Whatever Bill says, I will agree with
18 that.

19 MR. ROEBUCK: In this case, there was 50 grand
20 worth of savings.

21 CHAIRMAN COWGER: Mr. Roebuck has had his say,
22 now let me ask a couple more questions. In looking at
23 the VECP, one of the conditions that DOT came back with
24 was that the VECP design had to provide for scour to
25 the top of the rock for all bents including the end

1 bents, correct?

2 MR. GARCIA: Yes, that was done so to make the
3 VECP design equal to what we had on the plans.

4 CHAIRMAN COWGER: But you just said a minute ago
5 that you really didn't design those end bents for that
6 purpose, you designed them more to make all of them
7 uniform.

8 MR. GARCIA: That's correct because we looked at
9 what we would have to do to achieve that, and it was to
10 drill a few extra feet.

11 I gave you the analogy of designing reinforcement
12 in any component where you may make a change for the
13 conservative side. Same criteria.

14 CHAIRMAN COWGER: Let me finish what I started to
15 say, though. What Cone came back with in their
16 counterproposal was that they would set the
17 intermediate bents at an elevation of -- a tip
18 elevation of plus 35, which is close to the tip
19 elevation for the drill shafts. It would be about the
20 same degree of penetration into the limestone. I'm
21 sure if it was a couple of feet that could have been
22 negotiated.

23 Now what they said at the end bent, though, for
24 the end bents, they were only going to go to plus 40,
25 which is somewhere around the top of the rock.

1 So, again we're only talking about a difference
2 of five to eight feet of additional penetration on the
3 end bent for the pile design?

4 So, your two designs, as far as the penetration
5 of the piles versus penetration of the drill shaft
6 weren't that -- weren't all that far apart.

7 MR. GARCIA: With one major difference, and that
8 is direct contact with the rock, provided by either
9 grout or cement -- or concrete in our design.

10 CHAIRMAN COWGER: That's the thing I was going to
11 bring up. The next issue then came down to how to
12 grout those piling into the rock. As I understand it,
13 Cone's proposal was to do a lateral resistance analysis
14 and if it deemed -- if it was determined from that to
15 be necessary, then they were going to fill the annular
16 space in the hole between the hole and the pile,
17 between the rock and the pile, with sand, which was
18 unacceptable to DOT. You said it had to be done with
19 sand, cement, grout.

20 MR. GARCIA: And for the procedure to be
21 submitted for review.

22 CHAIRMAN COWGER: My question is as to how they
23 were going to do that, how they were going to install
24 the sand, cement, grout.

25 MR. GARCIA: Exactly.

1 CHAIRMAN COWGER: On this lateral resistance
2 analysis, I will ask somebody here on the contractor's
3 side. I assume that was to be done after the piles
4 were in place and you had taken these PDA measurements
5 and --

6 MR. GRAHAM: The PDA will give you a reading of
7 the lateral, the skin friction associated with the
8 piling at different levels of the pile itself.

9 CHAIRMAN COWGER: If you were going to predrill
10 the holes, you wouldn't get any readings, would you?

11 MR. GRAHAM: We are going to drive below the
12 hole, though.

13 MR. DEYO: On the fixative part it would.

14 CHAIRMAN COWGER: You were going to drive the
15 test piles with or without predrilling?

16 MR. GRAHAM: We were predrilling the test piles,
17 too.

18 CHAIRMAN COWGER: I'm not sure I understand how
19 the PDA was going to tell you anything about the
20 lateral resistance.

21 MR. GRAHAM: The PDA gives a reading of the skin
22 friction of the soil in association with the soil and
23 the piling. If there was a significant amount of skin
24 friction, then it met Steve's criteria as to how much
25 skin friction was developed.

1 CHAIRMAN COWGER: You drill the hole, you set the
2 piling in the hole, you drove it to seat it, you
3 grouted it, the bottom part.

4 MR. GRAHAM: We never agreed to grout it, Gene.
5 We proposed to drive it with the PDA. If there was not
6 significant skin friction, i.e., lateral stability,
7 then we would put the sand in there and then redrive it
8 with PDA to get another reading as far as what the skin
9 friction was showing after that happened.

10 CHAIRMAN COWGER: This skin friction that was
11 going to develop around that pile was assuming that the
12 pile -- the hole when you started driving --

13 MR. ROEBUCK: Fills up.

14 CHAIRMAN COWGER: -- was going to collapse around
15 the pile and started grabbing the pile, you might say.
16 Is that a reasonable assumption, Pepe?

17 MR. GARCIA: I'm not going to be able to address
18 that because I'm not a geotech engineer. I believe
19 there is a letter here that addresses that issue in
20 Section E. I believe it is in the one dated July 20th.
21 It's about --

22 CHAIRMAN COWGER: Which tab is it?

23 MR. GARCIA: Tab D, about six pages before Tab E.

24 CHAIRMAN COWGER: What is the date of the letter
25 again?

1 MR. IRWIN: July 20.

2 CHAIRMAN COWGER: From Larry Gaddy.

3 MR. GARCIA: "We have consulted with
4 Clark Williams," et cetera. I think it addresses that,
5 but there might be another one about that. Yes, it
6 addresses that.

7 CHAIRMAN COWGER: What you're looking at is that
8 July 20 memo from Larry Gaddy to Mike Irwin?

9 MR. GARCIA: Right.

10 CHAIRMAN COWGER: Number one, the second
11 sentence, that's the thing you're pointing out, isn't
12 it?

13 MR. GARCIA: Yes, says, "Mr. Lai advised that
14 proposal will not be accepted."

15 Now, in my view if you read further in there, at
16 this point we had agreed that they didn't have to
17 design the end bent piles to go but to the top of the
18 rock.

19 So, I mean we were trying to make things happen
20 and to -- we were not trying to turn it down, you know.
21 You can read that in there.

22 "We will accept piles at the top of the limestone
23 for the end bents as long as the minimum penetration
24 and installation requirements of the specifications are
25 satisfactory."

1 MR. GRAHAM: You all claim that penetration was
2 ten feet below the 500-year scour.

3 MR. ZENDEGUR: Which was not determined.

4 MR. GRAHAM: Yeah, which was well below that.

5 MR. GARCIA: There might be another letter
6 regarding that issue.

7 MR. GRAHAM: What is the penetration --

8 CHAIRMAN COWGER: Let's take about a couple
9 minutes break.

10 (Short recess)

11 CHAIRMAN COWGER: Okay. Let me ask you another
12 question. I hope it doesn't lead to what the last
13 question I asked led into.

14 I was interested in the statement that the
15 contractor made that said that during the period of
16 time between the date of the letting and the date of
17 the award of the contract there was some discussion
18 between the contractor and DOT in regard to this VECP.

19 And I assume that you all had your engineer
20 involved in it, too, at that point?

21 MR. GRAHAM: Steve went to the meeting.

22 CHAIRMAN COWGER: And there was an indication
23 from DOT that the concept of the VECP appeared to be
24 satisfactory. Is that basically what you all said?

25 MR. GRAHAM: Yes.

1 CHAIRMAN COWGER: I haven't heard anything from
2 DOT on this. I want to know what they have to say.

3 MR. IRWIN: I don't really remember that meeting.
4 Is there a date on that?

5 MR. GRAHAM: Early April. Steve and I met with
6 you and Larry Gaddy and discussed what our VECP
7 proposal was going to involve.

8 MR. IRWIN: Met with me and Larry?

9 MR. GRAHAM: Yes. You made the statement you
10 would prefer to have pilings out there rather than
11 drill shafts.

12 MR. IRWIN: I remember a conversation we had
13 about that, but that was very, very conceptual.
14 I don't believe we were --

15 MR. GRAHAM: We didn't have any plans or
16 anything. We were just thinking about pursuing it and
17 wanted to run it by you first.

18 MR. ZENDEGUR: As a matter of fact, the meeting
19 we had talked about using composite stay-in-place forms
20 to form the deck. And Larry said we will not approve
21 that, so we dropped that immediately.

22 CHAIRMAN COWGER: Good move.

23 MR. IRWIN: That's the type of thing you would
24 want to do on any VECP is have an early meeting to
25 discuss that, those type issues.

1 MR. ROEBUCK: Ninety percent of your structures
2 you have prestressed pile anyway, so why would you not
3 feel good about it.

4 MR. DEYO: And saving money.

5 MR. ROEBUCK: Right, and saving money.

6 MR. GRAHAM: We see nothing in the specification
7 in regard to having our design equivalent to Pepe's
8 design.

9 Now, if the U.S. Government mandates General
10 Motors to get 30 miles a gallon in their cars, they are
11 not to go out there and design one to get 50 miles per
12 gallon in fuel economy.

13 If Pepe's design had a longevity factor of a
14 200-year design, all our design met was the current
15 design guidelines. There was no requirement in the
16 current design guidelines to take scouring into
17 consideration at the end bents when you have riprap
18 protection.

19 That's still true today. We build jobs every day
20 that there is no scour consideration. The fact that
21 Pepe took it into consideration in his design is really
22 irrelevant to us because our design stands on its own
23 merits based on the existing design guidelines.

24 Now if there is something in particular on that
25 job that required special considerations of scour,

1 then, yes, we should do that. But there was nothing in
2 Lisa Hanson's DOT scour predictions that said anything
3 different about the scour around the ends bents.
4 That's what we used for our design.

5 MR. CONE: Weren't there, Bob, some
6 considerations that were enforced on us that were not
7 used on the original design, i.e., channel migration?

8 MR. GRAHAM: Yes, we had to consider that. They
9 wanted us to assume the 500-year scour was worst case
10 throughout the whole channel, whereas Lisa Hanson's
11 calculations -- she's the FDOT hydraulics engineer, she
12 had specific scour at specific borings based on
13 specific conditions.

14 We were required to assume worst case in every
15 condition because that's what Pepe did in his design.

16 I would also like to go back to Mike's point on
17 the cost savings which I think we have been unfairly
18 accused of not giving enough money back to the DOT.

19 What page is that --

20 MR. ELLIOTT: Your D.

21 MR. GRAHAM: The breakdown that we provided and
22 that they analyzed on the items deleted, those were our
23 existing contract unit prices that we bid for the job.

24 MR. CONE: Give them a page, Bob. It's in Tab D?

25 MR. IRWIN: Tab D, about four or five pages in

1 front of Tab E.

2 MR. GRAHAM: For instance, we bid \$21 a square
3 foot for the 15-foot prestressed slabs. DOT said we
4 should give back \$24. I didn't bid but \$21. I don't
5 see how I can give back more than I bid for that
6 particular item.

7 Excavation, unclassified. I bid \$83. They want
8 me to give back \$90. I only bid \$83. They come up
9 with a revised estimate of 742,000, which is 50,000
10 more than what I had bid in the items that were
11 actually deleted.

12 It wasn't like I was only deleting a part of the
13 item and giving them back part of the money, I gave
14 them back a hundred percent of it.

15 Then when they analyzed the items that were
16 added, my numbers came up within 2 percent of what
17 I assume are existing average unit price indexes, which
18 I think that's probably pretty close, so it shows that
19 my numbers were somewhat reasonable.

20 And then on the breakdown of the profit that we
21 lost on the VECP proposal, this is 12 percent of the
22 \$650,000. We did not factor any lost profit on the
23 items that were deleted because we deleted a hundred
24 percent of those items. All the profit had already
25 been credited back to the DOT.

1 CHAIRMAN COWGER: Where did the \$655 figure come
2 from?

3 MR. GRAHAM: That's the items that were added,
4 sum total. The profit on that was 12 percent.

5 MR. IRWIN: Why wasn't that included in the
6 original breakdown then?

7 MR. GRAHAM: I'm supposed to split the profit?
8 I gave you all the profit back I had on the items that
9 were deleted, so it would seem fair that I would keep
10 the profit on the items that were added. And the
11 differential between the added and the deleted is what
12 you and I split.

13 MR. IRWIN: I was thinking, you know, the
14 ultimate savings, cost savings for the proposal is what
15 should be split.

16 MR. GRAHAM: That's what I gave you back a
17 hundred percent of. A hundred percent of the items
18 deleted subtracted from a hundred percent of the items
19 added, that's what we split.

20 Now, I didn't split the profit on the items added
21 because I deleted a hundred percent of the profit on
22 the items that were deleted.

23 MR. IRWIN: You're saying that's money you would
24 have made on the items that we added if we had added
25 the items?

1 MR. GRAHAM: You accepted the proposal. It's
2 reasonable I had profits on the items that were
3 deleted. I gave you a hundred percent of the contract
4 value for those items. I think the program is set up
5 for me to make a profit on the items that were added.

6 MR. CONE: Basically he gave you back 12 percent
7 of 693,000 and then wanted 12 percent of that 650,000
8 for profit. So, our lump sum profit was actually less.
9 Is that correct?

10 MR. GRAHAM: Yes.

11 MR. IRWIN: Your what was less?

12 MR. CONE: Our lump sum profit would have been
13 less money on the VECP than it would have on the job as
14 bid.

15 MR. ELLIOTT: But as built, you earned the
16 profit, 100 percent of the profit as built.

17 MR. GRAHAM: That's correct. Do you want us to
18 give some of that money back?

19 MR. CONE: Well, of course we haven't factored in
20 the amount of delays and time that we could have been
21 building the job as originally designed, but we were
22 waiting in hopes that our VECP would be approved.

23 MR. GRAHAM: I'm just taking issue with the
24 \$119,000 that you all came up with that you said
25 I should credit and split back with the DOT. That

1 amount is calculated based on using numbers higher than
2 the existing contract unit price.

3 MR. ELLIOTT: I think I can speak for the DOT
4 that this is in error.

5 MR. GARCIA: What is in error?

6 MR. ELLIOTT: This is what he bid, \$21.

7 MR. GRAHAM: I can't give you \$44 back.

8 MR. ELLIOTT: He put his estimate together based
9 on statewide averages.

10 CHAIRMAN COWGER: Gentlemen, I can tell you we're
11 not going to pay any attention about statewide
12 averages.

13 Let me understand what the contractor's position
14 is. That the items added, the unit prices did not
15 include profit?

16 MR. GRAHAM: They included profit.

17 CHAIRMAN COWGER: The items deleted, the unit
18 prices did include profit, also?

19 MR. GRAHAM: Correct.

20 CHAIRMAN COWGER: I'm still lost where the 12
21 percent profit comes in if it was already built into
22 the unit prices.

23 MR. GRAHAM: Which ones are you talking about,
24 the items added or deleted?

25 CHAIRMAN COWGER: Items added. You said how you

1 arrived at the loss on VECP profit was you took 12
2 percent of that \$650,000?

3 MR. GRAHAM: That's correct.

4 CHAIRMAN COWGER: How do you justify that if
5 you had profit already built into each of those unit
6 prices?

7 MR. GRAHAM: Existing.

8 MR. DEYO: No, added.

9 MR. ROEBUCK: Added.

10 MR. GRAHAM: We didn't get to build it, so I lost
11 that profit.

12 MR. IRWIN: We didn't delete the items, so you
13 made the profit on what you said you would be losing.
14 There was no damages incurred.

15 MR. GRAHAM: Rammy made the statement that we had
16 12 percent on the items deleted. That is not the case
17 because the drill shaft work was done by a
18 subcontractor. We did not have 12 percent profit on
19 top of the subcontractor.

20 MR. IRWIN: So, you are adding -- that's
21 additional cost to the State. It should be
22 subtracted --

23 MR. DEYO: Under Tab E under DOT, it has summary
24 of items added to total up to 650,000. That was their
25 proposal?

1 MR. IRWIN: Yes.

2 MR. DEYO: Items deleted 693,757, those are
3 contract unit prices?

4 MR. IRWIN: Yes.

5 MR. DEYO: The contract unit prices included a
6 reasonable profit margin, is that correct? And you
7 built that according to the plans, so whatever profit
8 was included in that 693,000 figure, you got?

9 MR. IRWIN: He just said he didn't have a profit
10 in there because that was a sub's work.

11 MR. GRAHAM: We didn't have 12 percent.

12 MR. ROEBUCK: He's arguing that with the revised
13 deal he would have done more himself, but with the
14 as-built he wouldn't.

15 MR. DEYO: You have class two concrete,
16 substructure, reinforcing steel, prestressed slab --
17 those items would have had some profit built into them.
18 Just saying that the actual foundation work of drill
19 shaft was a sub and you didn't add on to that. Okay.
20 So, you bid that at all cost.

21 MR. GRAHAM: That's correct.

22 MR. DEYO: On the items added, everything up
23 there would have included some mark-up, is that
24 correct?

25 MR. GRAHAM: That's correct.

1 MR. DEYO: The question is how do we get to a
2 loss of \$78,000 VECP profit, how do we get to that
3 point?

4 MR. GRAHAM: We had --

5 MR. DEYO: It wasn't 78,000 additional dollars,
6 it was just \$78,000 profit.

7 MR. GRAHAM: The motivation for us to pursue this
8 was we did have more profit on the items added because
9 we were doing a hundred percent of the work. A point
10 well taken, that there probably is --

11 MR. DEYO: Scattered throughout those items
12 added, you're saying there's an additional \$78,000
13 somewhere laced throughout those items?

14 MR. GRAHAM: Correct.

15 MR. DEYO: Even though you were able to
16 accomplish the work for a less total sum, unit bid
17 price-wise, the profit margin was a little bit higher?

18 MR. GRAHAM: That's correct. That was part of
19 our motivation for wanting to do it.

20 CHAIRMAN COWGER: Now in the concrete items where
21 the precast per the plans or cast in place per the
22 VECP, those were all prime contractor items, were they
23 not?

24 MR. GRAHAM: Well, let me just take for instance.
25 Certainly a substructure cap cost of \$440 on an item

1 that was added is more profitable than a concrete cap
2 structure at \$400 a yard. You know, no question we had
3 anticipated making more profit on our VECP proposal
4 than we would have had if we had --

5 MR. IRWIN: But the cost to the DOT is --
6 shouldn't be additional because there was profit built
7 in both numbers. So, if you -- if the profit went to
8 Cone on -- for the items deleted for the work we had to
9 do, there was still profit for that number, it just
10 went to the subcontractor. It was still there.

11 MR. GRAHAM: The VECP program, I'm not sure I'm
12 obligated to give up additional profits. I'm supposed
13 to offer a savings to the Department.

14 MR. DEYO: It's just taking unit price, unit
15 price, the difference in the two is split if it's above
16 a certain amount. The claim is what might have been
17 had the VECP been accepted.

18 MR. IRWIN: From your February submittal, I would
19 like to add, it wasn't clear how you calculated that.
20 I assumed that what you were calling profit was
21 something that, you know, was another cost somewhere
22 else that wasn't showing up.

23 MR. GRAHAM: I didn't break it down.

24 MR. IRWIN: I didn't understand it when it was
25 submitted. I would withdraw the comment I made earlier

1 about that.

2 CHAIRMAN COWGER: Well, it is understood that DOT
3 never did, in fact, reject the VECP. What happened was
4 they put conditions on the VECP, the contractor made an
5 attempt to meet those conditions.

6 DOT said that attempt to meet those conditions
7 does not satisfy the design criteria. And at that
8 point due to time constraints on having to complete the
9 project, Cone withdrew the VECP.

10 MR. ROEBUCK: Gene, you said does not meet the --
11 it met the design criteria, didn't equate to Pepe's
12 design.

13 MR. IRWIN: Didn't meet the design criteria that
14 was set by the district. When he says it met the
15 standards, design standards but not the criteria for
16 the project.

17 MR. GARCIA: Again, that was set not by me, but
18 by the district in the review of appropriate DOT
19 personnel consultants.

20 MR. ROEBUCK: I imagine they made you the
21 representative here.

22 CHAIRMAN COWGER: Does either party have any
23 additional testimony?

24 MR. GRAHAM: Well, these are minor points that --
25 there was concern about the vibrations on the tips of

1 the existing piling. We plotted the tips of the
2 existing piling. They did not get to the bottom -- to
3 the top of the existing rock.

4 So as far as vibration and reflective cracking
5 associated with problems with those structures, I am
6 not sure where Mike was coming from on that. The tips
7 were seated well above the existing rock. The problems
8 with the existing bridge was that the 500-year scour
9 was going to be below those existing tips.

10 That's the reason that the new bridge was going
11 to be replaced was the scour problem, in addition to
12 the superstructure problem associated with longitudinal
13 cracking.

14 CHAIRMAN COWGER: DOT, what do you say about
15 that? What I'm hearing him saying is that the tips of
16 the piling in the existing bridge were above the rock.

17 MR. IRWIN: I don't think so. I think even the
18 contractor said it was around -- didn't you all say it
19 was right around --

20 MR. ROEBUCK: Top of the rock?

21 MR. GARCIA: The tips of the piles on the bridge
22 were where now?

23 MR. DEYO: On the old bridge, not the new design.

24 MR. GRAHAM: We plotted them on page --

25 CHAIRMAN COWGER: Where did you get that

1 information?

2 MR. GRAHAM: We surveyed the existing ground,
3 then we plotted from the old driving logs, the tips,
4 from the --

5 CHAIRMAN COWGER: You got the old driving logs?

6 MR. GRAHAM: Yes. On page 24.

7 MR. IRWIN: Is the question what were the
8 vibration concerns?

9 MR. GRAHAM: I heard that because those existing
10 tips were on top of the rocks that we were going to
11 induce vibration problems into the existing structure.
12 The fact of the matter is those tips were not on top of
13 the existing rock. So, we were not concerned -- that's
14 on page 24.

15 MR. GARCIA: Where does it show that?

16 MR. GRAHAM: The hard clay. There was a clay
17 layer in there that looks like they couldn't get
18 through.

19 MR. GARCIA: Our concerns about vibration to the
20 adjacent bridges were, you know, just concerns at the
21 beginning of the design, during the design based on the
22 information that our geotech consultant gave us.

23 MR. GRAHAM: Why didn't you have concern about
24 vibrating the steel casing down affecting the existing
25 structure?

1 MR. GARCIA: I can tell you the design office
2 would not have agreed to allow you to do any type of
3 activity there that would have resulted in excessive
4 vibration to the adjacent bridge.

5 MR. GRAHAM: We did it.

6 MR. GARCIA: I am not aware --

7 MR. GRAHAM: The specifications require vibration
8 monitoring on drill shaft work, and there's a pay item
9 in turn for doing that monitoring. There was no pay
10 item set up in this contract for vibration monitor.

11 MR. GARCIA: In general terms we are not
12 concerned with vibrations as a result of drilling
13 shafts.

14 MR. GRAHAM: I'm talking about vibrating casings,
15 not drilling. That's a part of the drill shaft work.

16 MR. IRWIN: Anyway, with all that aside, with all
17 this other design stuff aside, there were no damages
18 incurred on the contract. We built the job in
19 compliance with the plans we let. There was no breach
20 of contract, no change in the contract. There was no
21 additional costs incurred.

22 MR. GRAHAM: We did incur additional costs, Mike.

23 MR. IRWIN: What?

24 MR. GRAHAM: I paid Steve Zendegur \$15,000.

25 MR. IRWIN: The spec book says you are not

1 allowed to recover additional costs.

2 MR. GRAHAM: We did incur additional costs.

3 MR. IRWIN: I don't think -- you are not allowed
4 to recover the additional costs incurred in
5 development.

6 MR. CONE: That's why they changed the color of
7 that book from blue to gray, Mike.

8 CHAIRMAN COWGER: We will not argue about that.
9 We have heard enough about that. I think we fully
10 understand that issue. I'm not saying which way we
11 will go, but we fully understand that question.

12 I want to go back and ask one question. In the
13 nice little pink book on page 24, existing eastbound
14 structure, pile tip elevations, and the answer to this
15 is probably in here somewhere, but again, you are
16 saying that you plotted those pile tip elevations from
17 the driving logs from the original construction?

18 MR. GRAHAM: Correct.

19 CHAIRMAN COWGER: Where in the world did you get
20 those?

21 MR. GRAHAM: I will give you a copy of them.

22 CHAIRMAN COWGER: No, no, that wasn't really a
23 serious question, that you could recover something that
24 old is just amazing.

25 MR. GRAHAM: As a matter of fact, Cone Brothers

1 should have built the bridge.

2 MR. CONE: We probably should have known that
3 when we built that job, Mike.

4 MR. ROEBUCK: I doubt it. That bridge is not
5 that old.

6 CHAIRMAN COWGER: Is this the newer of the two,
7 the eastbound?

8 MR. GRAHAM: Yes, that's the one they were
9 concerned about.

10 (Discussion off the record)

11 CHAIRMAN COWGER: Are we through, gentlemen?

12 MR. GRAHAM: The contractor is through.

13 CHAIRMAN COWGER: DOT?

14 MR. IRWIN: Yes, sir.

15 CHAIRMAN COWGER: Mr. Roebuck?

16 MR. ROEBUCK: Through.

17 CHAIRMAN COWGER: Mr. Deyo?

18 MR. DEYO: No questions.

19 CHAIRMAN COWGER: This hearing is hereby closed.
20 the Board will meet to deliberate on this claim in
21 approximately six weeks, and you will have our final
22 order shortly thereafter.

23 Thank you, gentlemen.

24 (Whereupon, the hearing was concluded at 3:25 p.m.)

25

CERTIFICATE OF REPORTER

1
2 STATE OF FLORIDA)
3 COUNTY OF LEON)

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

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

13 Dated this 23rd day of June, 1995.

14
15 Catherine Wilkinson
16 CATHERINE WILKINSON
17 CSR, CP
Post Office Box 13461
Tallahassee, Florida 32317

18 STATE OF FLORIDA)
19 COUNTY OF LEON)

20 The foregoing certificate was acknowledge before me
21 this 23rd day of June, 1995, by CATHERINE WILKINSON, who
is personally known to me.

22
23 Kathleen Grow
24  KATHLEEN GROW
MY COMMISSION # CC276204 EXPIRES
April 20, 1997
BONDED THRU TROY FAIR INSURANCE, INC.
25