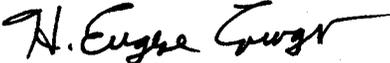


STATE ARBITRATION BOARD

NOTICE

In the case of Buckholz Traffic versus the Florida Department of Transportation on Project No. 57000-3501 in Okaloosa County, Florida, both parties are advised that State Arbitration Board Order No. 8-98 has been properly filed on January 22, 1999.


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

S.A.B. CLERK

JAN 22 1999

FILED

Copies of Orders & Transcript to:

Grég Xanders, P.E., Director of Construction/FDOT

Burita I. Allen, President/Buckholz Traffic

STATE ARBITRATION BOARD

ORDER NO. 8-98

RE: Request for Arbitration by
Buckholz Traffic
Job No. 57000-3501 in
Okaloosa 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 10:48 a.m. on Wednesday, December 9, 1998.

The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 8-98 in this cause..

ORDER

The Contractor presented a request for arbitration of a four part claim in the total amount of \$24,841.17.

The work on this project consisted of installing pedestrian signal features at four intersections, traffic striping, curb cut ramps and a traffic island.

The Contractor presented the following information in support of their claim:

PART I \$ 1,566.29

Our underground boring subcontractor experienced delays on the day he came to the project to do his work because of failure of Okaloosa Gas and Water and the City of Crestview to locate their underground facilities in advance of their arrival. We had given a one week advance notice to each of these owners. Typically, DOT accepts responsibility for the cost of delays to work caused by failures on the part of utility owners. DOT, not us, has contracts with the utility owners located in the DOT right of way.

Underground boring operations were delayed one hour in the morning and two hours in the afternoon. The amount claimed is based on the cost of non-productive equipment and labor.

PART II \$2,784.60

DOT has paid for Signal Cable based on one measurement between any two locations for all cables within those limits. Standard DOT practice is to pay separately for each cable..

PART III \$6,000.00

We gave notice a day in advance of the date on which we completed our work on the project and informed the DOT Inspector that the work would then be ready for hook-up and inspection. At three of the four intersections, the pedestrian signals could not be turned on the day we completed our work due to problems that were beyond our control. The Inspector prepared a punch list on the day we completed work and we completed all items listed thereon. We then moved our crew back to Jacksonville.

DOT scheduled a Conditional Acceptance Inspection for the following Thursday and, at that meeting, a representative of the DOT District Traffic Operations Office furnished us with another punch list.

These circumstances caused us to have to remobilize to the project site to participate in the Conditional Acceptance Inspection and to do the work set out in the second punch list.

We are claiming additional compensation for the costs we incurred due to having to re-mobilize due to failure of DOT to conduct the Conditional Acceptance Inspection in a timely manner.

PART IV \$14,490.28

DOT has paid for the work of curb cut ramps under the pay items Concrete Curb and Gutter (Type E) and Concrete Sidewalk (4"). We contend that, in accordance with Article A522-10 of Section A522 of the Special Provisions, this work is to be paid for under the pay item Curb Ramps (Retrofit). This pay item was not included in the Plan Tabulation of Quantities. Therefore, the contract does not include a way to pay for this work. It is our position that DOT should initiate a contract change to add the pay item Curb Ramps (Retrofit) with a per each price of \$1,147.50, as we quoted, for the 16 ramps constructed by us.

The Plan Tabulation of Quantities does not include a quantity for curb and gutter in curb ramps at any of the intersections. This led us to believe that curb ramps were to be paid for under the separate specification item for this work.

We did not include any costs for construction of the curb ramps in our bid, because we anticipated that DOT would correct the plan error during construction by establishing a new bid item for the work. We bid the unit prices for Concrete Sidewalk and Concrete Curb and Gutter at our typical prices in accordance with the work to be built under these items shown in the detailed plans for each intersection. Our prices reflect the nature of the work, small quantities.

The note on Index No. 0304 relating to payment for curb ramps under the items Concrete Sidewalk and Concrete Curb and Gutter does not apply here, because, in accordance with Article 5-2 of the DOT Standard Specifications, the Special Provisions govern over Road Design and Traffic Operations Standards.

We did not respond to this issue when raised by DOT at the Preconstruction Conference, because our person who prepared our bid for the roadway items was not present at that meeting.

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

PART I

Plan notes read "The contractor shall notify all utility companies and maintaining agencies forty eight hour in advance of work commencing" and "The contractor for this project will be responsible for contacting, locating and clearing all above ground and underground utilities before any construction work". A list of contact telephone numbers was included in the plans..

This is not a matter of conflict between underground utilities and proposed construction. It is only a matter of location of existing underground utilities. Thus, the issue is not a utility delay.

The key here is that the Contractor failed to adequately coordinate the work of his subcontractor and the utility companies.

PART II

During the hearing, DOT conceded this part of the contractor's claim.

PART III

The purpose of the inspection by the project inspector was to allow us to suspend charging of contract time which we did on the following day. This action was taken providing that all corrective work found necessary during the Conditional Acceptance Inspection by our Traffic Operations Office is completed in a timely manner. .

Article 5-10.2 of the 1991 Edition of the DOT Standard Specifications, which deals with Final Construction Inspection, states: The Engineer will make a semifinal inspection within seven days after notice from the Contractor of presumptive completion of the entire project". NOTE: DOT quoted from an edition of their Standard Specifications which does not apply to this project, but essentially the same wording is contained in the 1991 Edition which is applicable.

It is typical practice that the DOT District Traffic Operations Office make a final inspection of signalization work. It was not feasible to arrange for this inspection on a Saturday with only one day notice.

PART IV

A note on Road Design Index No. 0304, which is included in the plans, provides that curb ramps are to be paid for under the items Sidewalk Concrete and Curb and Gutter Concrete and sufficient quantities of these items were included in the contract to cover the quantities in the curb ramps and in other sidewalk and curb and gutter work (Traffic Island at the US 90-SR 85 intersection). There is a conflict between the wording of this note and the Special Provisions. However, when we brought this up at the preconstruction conference, the Contractor did not indicate a prior awareness of the conflict. Also, the Contractor did not notify DOT of an error during the bidding process. This indicates that the Contractor understood at the time he was preparing his bid that the curb ramp work was to be paid for under the item Concrete Sidewalk (4").

We attempted to correct the conflict by initiating a Change Order to delete the conflicting Special Provision. The Contractor refused to sign it, instead submitting a claim for additional compensation for the curb ramps.

Only 94 Sq.Yds.. of the 244 Sq.. Yds. of Concrete Sidewalk shown in the Plan Tabulation of Quantities is for sidewalk to be constructed at other than curb ramps (Traffic Island at the US 90-SR 85 intersection.). The plan quantities for Concrete Sidewalk and Curb and Gutter accurately reflect the total quantities of these items actually construct and accurately illustrated in the plans.

It is our position that payment under the Curb and Gutter and Sidewalk items is equitable compensation and that the Contractor is attempting here to take advantage of an error a responsible contractor would have discovered in preparing a bid and asked for a correction before submitting his bid. It is noted that the additional amount of compensation claim is 28% of the total contract amount.

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

PART I

No evidence was presented to show that the contractor followed through on his requests for utility locates immediately prior to arrival of his subcontractor at the job site.

PART III

Part IV of the Technical Special Provisions for District 3 Traffic Signal Installations (included in contract documents) provides for a Conditional Acceptance Inspection by the Traffic Operations Section and for the Contractor to complete a "Signalization Checklist" prior to the time of the Conditional Acceptance Inspection.

The Contractor gave only one day advance notice of anticipated completion of the work.

PART IV

The Tabulation of Quantities contained in the plans is misleading as to the quantity of Curb and Gutter to be constructed at each of the two intersections where curb ramps are shown. (Plan Sheet Nos. T-6 and T-7). The plan quantity for this item includes only the curb and gutter needed to construct the traffic island shown on Plan Sheet No. T-6.

Special Provision Section A522, the controlling contract document in this instance, provides for curb ramps to be paid for under the item Curb Ramp (Retrofit).

The cost breakdown for curb ramps attached to the Contractors letter dated February 21, 1998 reflects utilization of Signal Mechanics to do curb ramp construction and excessive foreman hours devoted to this operation.

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 for his claim as follows:

PART I Nothing

PART II

The amount due calculated using a final pay quantity for the item Cable (Signal) (F&I) based on each individual run of cable installed measured in accordance with Art. 632-5.2 of the Standard Specifications. .

PART III Nothing

PART IV \$8,500.00

This amount is to be in addition to the amount previously paid to the Contractor for curb ramp work under the items Concrete Curb and Gutter (Type E) and Concrete Sidewalk (4").

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 142.40 for one-half of the Court Reporting Costs.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$ 142.40 for one-half of the Court Reporting Costs.

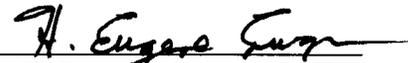
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JAN 22 1999

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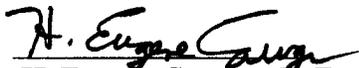
Tallahassee, Florida

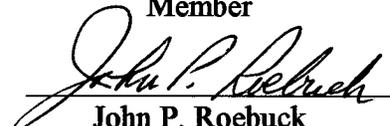
Dated: 22 Jan 1999


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

Certified Copy:


Bill Deyo, P.E.
Member


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


John P. Roebuck
Member

22 January 1999

DATE

204 ⁸⁰ ~~245~~

1 8-98

STATE ARBITRATION BOARD
STATE OF FLORIDA

S.A.B. CLERK
JAN 22 1999
FILED

BUCKHOLZ TRAFFIC)

- and -)

DEPARTMENT OF TRANSPORTATION)

PROJECT NO. 57000-3501

LOCATION: Okaloosa County

COPY

RE: Arbitration in the Above Matter

DATE: Wednesday, December 9, 1998

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

TIME: Commenced at 10:48 a.m.
Concluded at 12:02 p.m.

REPORTED BY: Mindy Martin, RPR
Notary Public in and for
the State of Florida at Large

Wilkinson & Associates
Certified Court Reporters
Post Office Box 13461
Tallahassee, Florida 32317

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

H. E. Cowger, Chairman
 Bill Deyo
 Jack Roebuck

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Stan Swiatek
 Billy R. Ezell
 Greg Ouzts
 Keith Hinson

APPEARING ON BEHALF OF BUCKHOLZ TRAFFIC:

Jeffrey W. Buckholz
 Nathan Ward

I N D E X

EXHIBITS

Exhibit No. 1 Received in Evidence	3
Exhibit No. 2 Received in Evidence	3
Exhibit No. 3 Received in Evidence - <i>Contn. Exhibit.</i>	5
CERTIFICATE OF REPORTER	58

P R O C E E D I N G S

1
2 CHAIRPERSON COWGER: This is a hearing of the State
3 Arbitration Board established in accordance with Section
4 337.185 of the Florida Statutes. Mr. Bill Deyo was
5 appointed as a member of the board by the secretary of the
6 Department of Transportation. Mr. John Roebuck was elected
7 by the construction companies under contract to the
8 Department of Transportation.

9 These two members chose me, H. Eugene Cowger, to
10 serve as a third member of the board and as the chairman.
11 Our terms began on July 1, 1997, and will expire June 30,
12 1999.

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

16 (Whereupon, all witnesses were duly sworn by the
17 chairperson.)

18 CHAIRPERSON COWGER: The documents which put this
19 arbitration hearing into being are hereby introduced as
20 Exhibit Number 1. That consists of the contractor's
21 request for arbitration and all of the information he had
22 attached to it. We will identify the department's written
23 rebuttal as Exhibit Number 2.

24 (Whereupon, Exhibit No. 1 and Exhibit No. 2 were received
25 in evidence.)

1 CHAIRPERSON COWGER: Does either party have any other
2 information it wishes to put into the record as an
3 exhibit? And I need to explain. You know, if you've got
4 something that you want to refer to or you've got a picture
5 or something that you want to show us, we won't consider
6 that to be an exhibit.

7 MR. SWIATEK: Just the contract documents, which are
8 part of the record.

9 CHAIRPERSON COWGER: Well, that's fine.

10 MR. BUCKHOLZ: Well, I have a memo that I might refer
11 to.

12 CHAIRPERSON COWGER: Is that in your package?

13 MR. BUCKHOLZ: It's not in my package. I just came
14 upon it this morning.

15 MR. ROEBUCK: Did you make enough copies for us?

16 CHAIRPERSON COWGER: Is there anything else we need
17 to copy?

18 MR. ROEBUCK: Tell them to make enough for the state,
19 too.

20 CHAIRPERSON COWGER: Okay. ~~It's an internal memo.~~
21 ~~Exhibit Number 3. It's a memo.~~ I don't have the date on
22 it, because we sent it off to be copied, but it's a memo
23 from --

24 MR. BUCKHOLZ: ~~It's an internal memo.~~

25 CHAIRPERSON COWGER: An internal DOT memo. I assume

1 that neither party has any need to take time to examine the
2 additional exhibits. That other one will be back in a
3 minute. And since it's an internal memo, I'm sure DOT is
4 familiar with it.

5 (Whereupon, Exhibit No. 3 was received in evidence.)

6 CHAIRPERSON COWGER: During this hearing, the parties
7 may offer such evidence and testimony as is pertinent and
8 material to the controversy and shall produce such
9 additional evidence as the board may deem necessary to an
10 understanding and determination of the matter before it.
11 The board shall be the sole judge of relevance and
12 materiality of the evidence offered.

13 Parties are requested to assure that they received
14 properly identified copies of each exhibit submitted during
15 the course of this hearing and to retain these exhibits.
16 The board will furnish the parties a copy of the court
17 reporter's transcript of the hearing, along with its final
18 order, but we will not furnish you copies of the exhibits.

19 The hearing will be conducted in an informal manner.
20 First the contractor's representative will elaborate on
21 their claim, and then the Department of Transportation will
22 offer rebuttal. Either party may interrupt to bring out a
23 pertinent point by coming through the chairman. However,
24 for the sake of order, I must instruct that only one person
25 speak at a time. That's also for the sake of the court

1 reporter, of course. We're ready for the contractor to
2 proceed.

3 MR. SWIATEK: Those were double-sided that was in our
4 rebuttal, and it didn't get double-sided copied.

5 MR. ROEBUCK: Do you remember what tab it was in?

6 MR. OUZTS: I think it's the second.

7 CHAIRPERSON COWGER: Let's go off the record just for
8 a minute.

9 (Discussion off the record)

10 CHAIRPERSON COWGER: Would everybody please identify
11 this as Exhibit Number 3, the document that I'm passing
12 out. Did you pass one on down to the contractor, Jack?

13 MR. ROEBUCK: Yeah.

14 CHAIRPERSON COWGER: Okay. And this has to do with,
15 Exhibit Number 3 has to do with the cable issue, right?

16 MR. ROEBUCK: Uh-huh.

17 CHAIRPERSON COWGER: Okay. I want to reiterate one
18 thing. It appears like that part four of this claim is the
19 meat of what we're here to discuss, so we'd like to kind of
20 go through parts one, two, and three rather quickly if we
21 can. We don't want to cause anyone not to get in their
22 full presentation, but there's certainly not any reason to
23 repeat a bunch of things that the board has already seen.

24 Okay. Excuse me just a second.

25 (Discussion off the record)

1 CHAIRPERSON COWGER: Okay. Proceed.

2 MR. BUCKHOLZ: Yes, we'll start with the ~~_____~~
3 ~~_____~~ delay issue. P-T

4 MR. ROEBUCK: Do you want him to summarize his whole
5 claim here?

6 CHAIRPERSON COWGER: Oh, I want the total amount of
7 the claim, yeah.

8 MR. BUCKHOLZ: Okay. The total amount of the claim
9 is approximately \$24,000. It's 24,841.17.

10 CHAIRPERSON COWGER: Okay. That's all we need.

11 MR. BUCKHOLZ: And four portions. The first portion,
12 around \$1,500, is the utility delay. And this is a
13 situation where we followed all the requirements in the
14 plan specifications, ~~contacted all the appropriate people,~~
15 including Sunshine.

16 Our boring contractor, which is a rather high-priced
17 contractor that came all the way from Jacksonville, at the
18 first site of boring was delayed a substantial period of
19 time because the water company had not yet marked their
20 facilities even though we had given them plenty of notice.
21 And then at the second locate, to do his directional bore,
22 he was again delayed this time by the gas company, again
23 for an hour or two.

24 It was longer than stated in the inspector's
25 documentation of just 20 minutes. First of all, she wasn't

1 there at the start of the first delay. When the first
2 delay occurred, she wasn't on site. I know these things
3 because I was on site in both delays.

4 And the second delay she may have underestimated the
5 amount of time, because the contractor was doing some
6 ~~milling around with some pull box type stuff, but he was~~
7 ~~basically killing time.~~ He couldn't use his guided boring
8 equipment. So she may have interpreted that as productive
9 activity. I don't know.

10 But in any event, I personally was there and know it
11 was a few hours of delay in total on a fairly extensive
12 crew. And we did everything we could to notify all the
13 utilities of everything and we were delayed.

14 Now, DOT's stance that they're not responsible for
15 utility delays is new to me. If that's the case and that
16 is the policy of the Florida, I'd sure like to know that,
17 because that's ~~never been the case in other jobs that we've~~
18 ~~worked on where a delay occurred.~~ Our contract is with the
19 DOT, not with the utility companies. So if a delay occurs,
20 it's typically the DOT's fault, even though the utilities
21 aren't the DOT. So that's our case in a nutshell in that
22 first one.

23 CHAIRPERSON COWGER: As I understand it, the
24 ~~Jacksonville boring contractor was only on the job one day?~~

25 MR. BUCKHOLZ: That's correct.

1 CHAIRPERSON COWGER: Okay. Go ahead, DOT.

2 MR. SWIATEK: Our response is quite simple. This is
3 not a utility delay, because there were no utilities in the
4 way. They were waiting for the locates. The DOT does not
5 locate utilities. It's up to the contractor to contact the
6 utility companies to do the locates, whether it be through
7 the 1-800 Sunshine number or individually if they're not
8 subscribers to that system.

9 And, you know, there were no utility interferences
10 with the work that was done. This is really a claim, if
11 there is merit to it, to Buckholz for whatever delays.
12 That is a third party damage between him and the locate
13 companies and/or the utilities and not the DOT and
14 Buckholz. They should pursue this remuneration through
15 them.

16 MR. BUCKHOLZ: I don't think there's much of a
17 disagreement on facts on this one. It's just a matter of
18 what's the policy. It's always been our understanding that
19 if delays were caused, that our contact is with the DOT and
20 it's their responsibility. So I guess it's more of a
21 policy question. There is a disagreement on facts over
22 time, but I think I tried to explain why I think that might
23 have occurred. It's a matter of what's the policy.

24 MR. DEYO: I have a question on the time. Your claim
25 package identified the 21st, January 21st. Their response

*Buckholz
respons-
ability*

1 was the 14th. Do you concede the date --

2 MR. BUCKHOLZ: Yeah. Their date might be correct.

3 MR. DEYO: Their date is correct? Because we have
4 references in the contract documents.

5 MR. BUCKHOLZ: Their date very well could be correct.

6 CHAIRPERSON COWGER: Is there any significance to
7 that?

8 MR. BUCKHOLZ: Not really.

9 CHAIRPERSON COWGER: DOT? The inspector's report
10 clearly makes it the 14th.

11 MR. BUCKHOLZ: Yeah. It **very well could have been**
12 **the 14th.**

13 MR. SWIATEK: Our daily reports were made there on
14 site at the time and aren't, you know, based on
15 recollection.

16 MR. BUCKHOLZ: Reconstructing dates on my part was --
17 I could have been off easily by a week on that.

18 MR. SWIATEK: **If we ran into a situation where there**
19 **was a utility in the way that stopped the boring from**
20 **taking place, it wouldn't have even been an issue. But**
21 **there was no interference of locating, waiting a couple**
22 **minutes for them to be located. It's just not something**
23 **that's considered a utility delay.**

24 MR. BUCKHOLZ: Well, it wasn't a couple minutes.
25 I mean, the gas and water utility companies spent a

1 substantial amount of time trying to locate their
2 facilities. It wasn't a couple minutes.

3 CHAIRPERSON COWGER: DOT, I think you're making
4 reference to, in the special provisions there is a
5 statement that says, "The contractor shall, at his expense,
6 makes the necessary arrangements with utility owners for
7 removal or adjustment of utilities if considered necessary
8 by the contractor."

9 MR. SWIATEK: That's correct.

10 CHAIRPERSON COWGER: And I heard the DOT say that,
11 well, this really was not a relocate but merely a --

12 MR. SWIATEK: Locate.

13 CHAIRPERSON COWGER: -- locate.

14 MR. BUCKHOLZ: Which is required by law.

15 CHAIRPERSON COWGER: Which would come under the part
16 of this that talks about, well, there's a plan note
17 somewhere that expands on that a little bit. The only
18 issue I see at hand here is that the contractor contends
19 that he gave ample notice to both these utilities to come
20 out and locate their facilities, and they waited until the
21 morning that the work was to begin to locate them. Is that
22 kind of typical?

23 MR. SWIATEK: You'd have to ask the utility companies
24 that, because we don't -- that is not our responsibility.
25 That's a third party damage and we're not party to that.

1 That's his responsibility to handle.

2 CHAIRPERSON COWGER: Do you have, on this type of
3 project where the utilities are so minimal, does the DOT
4 have a utility relocation agreement, any kind of utility
5 agreement with the utilities?

6 MR. SWIATEK: There were none required for this job.

7 MR. BUCKHOLZ: What's confusing to me is he's got a
8 big utility department, and we had their utility
9 representative at the preconstruction conference who
10 admitted there were no utilities on the plans. And
11 he suggested we have a utility partnering meeting, which
12 never occurred.

13 They pay lots of people to deal with utilities. And
14 here is a situation where we did everything we were
15 supposed to do and the utilities weren't properly located.
16 And they weren't on the plans to begin with, which made it
17 even more difficult.

18 So if DOT is just washing its hand of any requirement
19 relative to utilities, like I said, if that's the case,
20 I sure would like to know on future projects. But it's
21 going to get real messy as to who's responsible when you
22 have a utility problem like this. So we're supposed to go
23 sue Okaloosa Gas and sue the City of Crestview to get
24 compensation? Is that the DOT's position?

25 MR. DEYO: The point that you're making is that the

1 locations were not shown on the plans under One-Call,
2 Sunshine One-Call, which is state law. They're required to
3 come out and locate that, but you have to give them prior
4 notice.

5 MR. BUCKHOLZ: Well, we did. X

6 MR. DEYO: And if they don't respond, then it's your
7 responsibility to take appropriate action. The part about
8 the policy, I can address that separately, but the point in
9 contention here is whether the plans and specs properly
10 identified what you perceive as a conflict.

11 MR. BUCKHOLZ: Well, there were no utilities on the
12 plans at all, zero.

13 MR. SWIATEK: Sheet T-3 has a note that says the
14 contractor is responsible for contacting, locating, and
15 clearing all above- and below-ground utilities. There were
16 no utilities found that had to be cleared or moved. That
17 leaves contacting and locating. And the locating is
18 between him and a third party to the DOT, which we have no
19 control over. And that's our position.

20 We do not locate utilities. Utility companies locate
21 utilities. And the damage that he's seeking should be
22 sought from them and not us.

23 CHAIRPERSON COWGER: Okay. I think we've heard
24 enough on that except for one question. It's your
25 testimony, Mr. Buckholz, that you did notify the water and

1 the gas people of this in advance?

2 MR. BUCKHOLZ: Yeah. We called all the numbers in
3 the plans. And we also called Sunshine. Plenty of time in
4 advance. More than 48 hours. And I have documented phone
5 things on that that are in my transmittal.

6 CHAIRPERSON COWGER: So the DOT did give you the
7 proper people to call right here in the plans; no question
8 about that. And the question is whether or not they
9 reacted, the utilities, as they should.

10 MR. BUCKHOLZ: Yeah.

11 CHAIRPERSON COWGER: Can we move on to part two,
12 then?

13 MR. SWIATEK: The department is going to concede part
14 two on the claim.

15 CHAIRPERSON COWGER: You're going to concede that?

16 MR. SWIATEK: Yeah, we're going to make payment for
17 that.

18 CHAIRPERSON COWGER: Well, that speeds things up,
19 doesn't it? PART III

20 MR. BUCKHOLZ: Well, if they can show me a document
21 they've got in point three, I may be conceding point
22 three. They refer to a specification of a seven-day
23 requirement that I couldn't find anywhere. But if they can
24 show that to me, I will concede. Point three is the
25 mobilization.

1 MR. ROEBUCK: Mobilization and remobilization.

2 MR. BUCKHOLZ: Because you've got reference to the
3 document there in point three, which is your attachment,
4 let me find it, six, that I just can't find that document.
5 I don't know what document it is. Attachment six, page 32
6 it says at the bottom of the thing.

7 Because it refers to a seven-day notice period. And
8 if that's the case, then we would withdraw our number
9 three, but I can't, I was not aware of that at all,
10 according to the contract. It looks like a xeroxed copy
11 out of some kind of spec book. I looked in all the spec
12 books I have.

13 CHAIRPERSON COWGER: In my study of this thing,
14 somewhere or other, I don't know what I did with it now,
15 you all have got a standard specification book there.
16 Section 5, let me see here.

17 MR. SWIATEK: 5-10.2 is the statute.

18 CHAIRPERSON COWGER: Yeah, that's it. Read us that,
19 would you, the part that deals with --

20 MR. BUCKHOLZ: Yours says inspection of acceptance
21 and my gray spec book says semifinal inspection. So I'm
22 just wondering where this came from because it doesn't read
23 the same.

24 MR. SWIATEK: Gene, apparently this here was taken
25 out of a specification book that's not part of the contract

*Taken from '99 Std Spec
Active Voice Ed.*

1 documents. It's a later version specification by error on
2 our part.

3 MR. BUCKHOLZ: Do you know what it was taken out of?
4 Because I couldn't find it in any of my books. I'd be
5 curious as to whether -- because I looked in the 1996, too,
6 and I couldn't find it and I thought maybe there was
7 something --

8 CHAIRPERSON COWGER: I'm a little bit confused. What
9 are we looking for, now?

10 MR. BUCKHOLZ: ~~The reason that it's important is in~~
11 ~~here it makes the statement, "The engineer will make an~~
12 ~~inspection for acceptance within seven days after such~~
13 ~~notice." This seven-day requirement or window is not in~~
14 ~~any of the other spec books or in the technical special~~
15 ~~provisions.~~ *^ Wrong is in 5-10.2 -91. Edh T.ck*

16 And it's important because if there is a seven-day
17 window allowed, then our argument goes right out of the
18 window. If there isn't a seven-day period, then our
19 argument is still pertinent. If he could have showed me
20 this one, I was willing to drop it, but without it, I guess
21 I'd like to still discuss it.

22 CHAIRPERSON COWGER: Well, go ahead.

23 MR. BUCKHOLZ: This was a situation that has to do,
24 the basic root of it has to do with the plans. Three of
25 the four signals were not hook-up-able or not connectable

1 when our work was done, because there was either incorrect
2 phasing that would have been dangerous or because there
3 weren't enough load switch bays in the cabinet.

4 I brought this to the attention of the DOT people
5 early on, and it went all the way to the Traffic Ops
6 group. And they basically told me that I didn't know what
7 I was talking about. And with signals, I do know what I'm
8 talking about. And so eventually we got to the point of
9 turning these things on and we couldn't turn them on.

10 So at that point the guy from the county came out,
11 and he basically verified what I had said. And then
12 everybody started to take it sort of seriously. But we
13 were done with all our work. We had requested that we have
14 a conditional acceptance at the end of our work, which was
15 going to occur on a Saturday. Again, I have the wrong
16 dates in my book. It was going to occur on a Saturday.

17 We gave notice that we would want to schedule a
18 conditional acceptance and that our crews were going home.
19 You know, we're in Crestview, not Jacksonville. It's over
20 five hours away. By the time we finished, there was nobody
21 there to inspect and we were told to come back -- stick
22 around until Thursday or come back on Thursday. As a
23 matter of fact, we weren't even told. There was nobody
24 there to inspect, nobody's here to inspect.

25 So we went home. Took all our people home and

1 checked out of the hotel and were basically unilaterally
2 notified that on Thursday of the next week we were going to
3 have conditional acceptance. So we had to send a person
4 back out there.

5 We had gotten a punch list the first time, which we'd
6 done. Then we got a second punch list. And then we had to
7 address that second punch list for the conditional
8 acceptance. And we had to send another bucket truck and
9 person out again to address that.

10 So our contention was that instead of coordinating so
11 that we didn't have to come back out again, the DOT
12 basically unilaterally set this thing up for later on and
13 caused us to have to basically remobilize our group and go
14 back out there again.

15 Now, the amount of it, the way I did it, was to count
16 the mobilization fee again. And you may have different
17 feelings about how that should be done, but that's what
18 I did.

19 CHAIRPERSON COWGER: What you did was take your bid
20 price for mobilization and somehow use it?

21 MR. BUCKHOLZ: And say we've got to use it again
22 because we had to remobilize again.

23 CHAIRPERSON COWGER: So how much was your bid item
24 for mobilization?

25 MR. BUCKHOLZ: It was 1,500 per intersection. There

1 were four intersections. So 6,000.

2 CHAIRPERSON COWGER: So that is the bid unit price
3 for mobilization?

4 MR. BUCKHOLZ: For mobilization.

5 CHAIRPERSON COWGER: Okay.

6 MR. BUCKHOLZ: And so that's the discussion there.
7 The only other thing that I would say is that there was
8 this big issue of bagging heads, whether we should bag
9 heads or not bag heads. And our position was that the
10 whole reason -- we were ready to turn the signals on. And
11 if there was any bagging of heads that had to occur, that
12 it wasn't our fault that the heads weren't being turned
13 on. It was their responsibility. Eventually, one of our
14 guys did bag the heads.

15 CHAIRPERSON COWGER: You're not claiming any money
16 for that?

17 MR. BUCKHOLZ: No. That's just a side point that's
18 discussed. That's it in a nutshell.

19 CHAIRPERSON COWGER: Before we got to DOT, we need to
20 let them say a little bit on this, I'm sure, this was
21 strictly, other than the curb ramp and the one little
22 island, all this was strictly installing pedestrian sensor
23 devices?

24 MR. BUCKHOLZ: Yes. That was the main thrust of the
25 project, pedestrian, pedestrian heads and detectors,

1 although the hardest part of the work was doing all the
2 curb cutting and island work. That was the hardest part.

3 CHAIRPERSON COWGER: When you got into the cabinets,
4 did you have to do anything other than hookup? Was there
5 additional equipment to be installed in the controller
6 cabinet?

7 MR. BUCKHOLZ: No. When we left, still three of the
8 four intersections were not functioning.

9 CHAIRPERSON COWGER: So the controller had the
10 capability of controlling these pedestrian signals?

11 MR. BUCKHOLZ: They had to do something later. One
12 of the four intersections turned on with no problem. It
13 was set up correctly. One of the intersections, they had
14 to make some sort of load switch modification later. Two
15 of the intersections, the phasing had to be changed, which
16 they must have done later.

17 CHAIRPERSON COWGER: How many people did you bring
18 back? That's what I wanted to find out.

19 MR. BUCKHOLZ: To the conditional acceptance, we
20 brought one. To do the final work, we brought two people
21 on a bucket truck. The conditional acceptance was one
22 person in the service truck.

23 CHAIRPERSON COWGER: Go ahead, DOT.

24 MR. EZELL: The assertion from the contractor is that
25 he was ready for final inspection on this particular

1 Saturday. He did make such a comment to me, that he would
2 be ready on Saturday. And I informed the Traffic
3 Operations division, which does the final acceptance on
4 signals. As the construction office, we inspect the
5 construction, but we don't do the final inspection of the
6 technical aspects of signalization. That's done out of
7 Traffic Ops.

8 CHAIRPERSON COWGER: We understand.

9 MR. EZELL: So whenever Mr. Buckholz informed me that
10 he would be ready on Saturday, this was not a foregone
11 conclusion. There was still work that, in my mind, on
12 Friday afternoon, was questionable, whether he would be
13 finished or not. But that didn't change anything. I went
14 ahead and informed Traffic Ops, and they set the schedule
15 for the conditional acceptance inspection.

16 Our point of view at that time was to see that the
17 construction phases of it are all completed and to keep
18 Mr. Buckholz from going into liquidated damages. The
19 contract time was running very close. I had proposed a
20 time suspension to allow him to save his contract time for
21 any necessary changes or corrections that he had to make.

22 CHAIRPERSON COWGER: Punch list work?

23 MR. EZELL: Yes. So the timing of the conditional
24 acceptance inspection was from Traffic Ops. I think it's
25 unreasonable for a person to think that another operation

1 is going to be out there in the event that he may finish
2 his work, because it was not a foregone conclusion.

3 CHAIRPERSON COWGER: Okay. I think we can leave that
4 very shortly, but let me mention a couple of things right
5 quick. In doing my analysis of this thing, looking at the
6 technical specifications on page five for the project,
7 there's an article called acceptance, inspection, and
8 transfer. ~~And I~~ think that's probably the wording that the
9 board is going to be looking at pretty much to make a
10 decision on this matter as to what the contractor's
11 responsibilities were. And I'll let either one of you
12 comment on that when I finish. But let me make one other
13 comment.

14 MR. BUCKHOLZ: I can't seem to find that. Where is
15 that?

16 CHAIRPERSON COWGER: It's in the technical
17 specifications, way at the back.

18 MR. BUCKHOLZ: Oh, way at the back. Okay.

19 CHAIRPERSON COWGER: Well, not way at the back.
20 About midway, a little past midway.

21 MR. BUCKHOLZ: This thing has got so many page
22 fives. Oh, there they are. All right.

23 CHAIRPERSON COWGER: Look for the one that says
24 acceptance, inspection, and transfer.

25 MR. BUCKHOLZ: Okay.

1 CHAIRPERSON COWGER: The other question I had,
2 I looked at what I call punch list number two, the one that
3 was done on the 12th of February. On the 12th of February
4 there's a punch list here that indicates some 12 items that
5 needed to be done to get final acceptance or to get the
6 conditional acceptance I guess is what we were looking for
7 at this point.

8 That was in the package that Buckholz submitted. And
9 it was a letter dated February the 16th, 1998, from
10 Mr. Ezell to Mr. Buckholz, giving him the second punch
11 list. Again, this was the one that developed when a
12 conditional acceptance inspection was made.

13 MR. BUCKHOLZ: Can I ask something?

14 CHAIRPERSON COWGER: Put that together with the
15 technical specification that I mentioned, I'll say no
16 more. I just want to know if anybody has got any comments
17 on that.

18 MR. BUCKHOLZ: I'd like to maybe ask a question or
19 say something and make sure my understanding of this is
20 right. We did complete the signalization checklist and all
21 the items in the specifications and the as-builts and all
22 that. And we were ready on that date to go, because our
23 time was running out, obviously. And we intended on
24 finishing. We did finish as we were supposed to.

25 I thought the way this worked, and I tried to look

1 through the specs and it isn't totally clear, was that when
2 you're done and all the work is done, basically then it's
3 time for conditional acceptance. On signal jobs, that's
4 when what we call the burn-in starts, which would be
5 appropriate here on this job because we have signals.

6 CHAIRPERSON COWGER: Right. I'm familiar with that.

7 MR. BUCKHOLZ: It was a little difficult to start the
8 burn-in because three of the four installations were not
9 functioning, but you could have, obviously we started the
10 burn-in on the fourth one. That is usually at the time
11 that you get a -- that a punch list is developed.

12 In other words, there's a conditional acceptance.
13 They basically say this thing can operate. It's not
14 perfect. We've got little things here, caulking and stuff
15 that needs to be done, things need to be tightened up, but
16 it can go into operation. We can start the burn-in. And
17 then typically, in my experience, the punch list is
18 developed during the burn-in. And finally, between then
19 and final acceptance is when you address your punch list.

20 So that's the way we've always done it on
21 signalization jobs. In other words, the punch list is
22 something you address between conditional and final
23 acceptance. But we never seemed to have a burn-in period
24 here. We got two punch lists, one before we were done and
25 one five days after conditional acceptance, and there was

1 never any final meeting to have a final acceptance or
2 anything like that. So I was a little confused as to the
3 whole process, because it didn't seem to jive with what
4 I thought the standard process was.

5 And so, again, on this one, I would look for some
6 clarification. All I know is that we had to go leave, it
7 seemed very unnecessary for us to have to go leave and then
8 come back again a couple times when we could have addressed
9 everything right then.

10 CHAIRPERSON COWGER: Before we come back to DOT, let
11 me ask you one question. If there were items that had to
12 be addressed after the conditional acceptance inspection,
13 it still would have required ~~us~~ to come back and do
14 those things, wouldn't it?

15 MR. BUCKHOLZ: Right. We could have come back. We
16 had to come back twice. We would have only had to come
17 back once. That's right.

18 CHAIRPERSON COWGER: Mr. Ezell? Let's try to wrap it
19 up, then.

20 MR. EZELL: Mr. Buckholz makes an issue of two punch
21 lists. The first punch list that he refers to is a list
22 that he was given to try to urge him to go ahead and
23 complete his construction work, which had to do with
24 curb-cut ramps, the poles themselves, utilities poles, work
25 that was not being completed in their rush to leave on this

1 particular Saturday. And that's what this list is all
2 about.

3 The purpose of the list was to encourage him to
4 finish his work, so that we give him, grant him, the
5 department could grant him a time suspension. I would not
6 grant a time suspension with incomplete work. The
7 construction inspector that was on the site is not
8 qualified to check electrical and technical materials. X
9 Only Traffic Ops is qualified to do that. And they had
10 given us a schedule of when that should be.

11 Mr. Buckholz also makes another point of two
12 mobilizations now, one when his representative attended the
13 conditional acceptance inspection. He treats that as like
14 a separate mobilization, for one man to attend a meeting.
15 Had his work been very quality and complete, there would
16 have been nothing to repair for another mobilization.

17 MR. BUCKHOLZ: I'd like to respond to that,
18 definitely, if I could respond. If we get into quality,
19 this is probably the worst set of plans that I've ever seen
20 by DOT relative to bid items and things like that. And we
21 made, I think, a very good effort to do what was intended.
22 And even when we warned the department that there would be
23 problems, they ignored us. But we did our best to make
24 this thing work, and I think it's a pretty good
25 installation.

1 The things that were wrong were relatively minor
2 things. And the bottom line is I don't know if we should
3 get full mobilization for this. I'm willing to say that we
4 should get some partial thing. I just didn't know how else
5 to do it. All I know is our job is to build. Their job is
6 to have the people there to inspect when it's time to
7 inspect. And they didn't have their people there to
8 inspect when it was time to inspect.

9 CHAIRPERSON COWGER: I really think the board members
10 would agree that we've heard enough on this. We'll let you
11 come back.

12 MR. SWIATEK: One thing, Gene, that needs to be
13 clarified. There were final connections before a burn-in
14 period could start on this job that aren't typical of other
15 signal jobs. And the final connections were not to be made
16 by the contractor, and that is included in the plans. And
17 that required some finagling of schedules and what have
18 you. And it is not, quote, ordinary. It is out of the
19 ordinary.

20 CHAIRPERSON COWGER: I'm not sure that's pertinent to
21 what all this discussion is about.

22 MR. SWIATEK: It comes into when the time was
23 suspended, and then we had to wait until we started a
24 burn-in period and what have you.

25 CHAIRPERSON COWGER: I don't think that's got

1 anything to do with the claim, as far as I can see, what
2 you said and what the contractor said about that issue.

3 MR. SWIATEK: We don't see any remobilization at all.

4 CHAIRPERSON COWGER: I've got a concern. One more
5 thing I'd like to have you address, Mr. Buckholz. Again,
6 going back to punch list number two, which was attached to
7 the February 16th letter to you, looking at those 12 items,
8 I'm sure the board is going to come up and ask if you did
9 this signalization checklist, how come you didn't pick
10 those up before you left the job, by yourself?

11 MR. BUCKHOLZ: I'm trying to find that letter in the
12 package.

13 CHAIRPERSON COWGER: Did DOT find it?

14 MR. BUCKHOLZ: Well, some of these items weren't a
15 problem once we got out there.

16 CHAIRPERSON COWGER: This is the one from that date,
17 which is --

18 MR. BUCKHOLZ: Well, we can talk about things.
19 Conduit too high in the pull boxes. That's kind of a
20 judgmental call as to how high.

21 CHAIRPERSON COWGER: Well, let's not look at each one
22 individually. Looking in general, just kind of scan 
23 through there, do you say that none of those 12 items were
24 something that you could have detected?

25 MR. BUCKHOLZ: The cover plate missing, we're

1 not sure that we didn't put that on there versus somebody
2 taking it, but it's possible for us to miss a cover plate.
3 The span wire touching telephone wire, that was not the
4 case. When we got out there, the span wire was not
5 touching the telephone wire on Stillwell Boulevard. A
6 ground rod missing in a pull box, it's possible for us to
7 miss a ground rod. I mean, that happens.

8 They didn't like the type of -- they wanted a
9 compression fitting instead of a u-bolt. We use u-bolts
10 all the time to attach wires like this together. But if a
11 particular district wants a compression fitting, we're
12 happy to accommodate. We had, we thought, exothermically
13 welded all the ground rods. I was definitely there and
14 watched them do it. There might have been a few we
15 missed. This gives you the impression that we didn't
16 exothermically weld any of them. I personally watched them
17 do it on a number of occasions. So we might have missed
18 one or two.

19 Ground wire pull box lids must be bare or green
20 color. We had used the black wire. They didn't like it so
21 we replaced it with a bare wire. What we did was we
22 stripped the wire. We stripped the black off the wire.

23 I mean, these are relatively minor things, some of
24 which are a matter of preference. You know, how high the
25 conduit comes up in a pull box is a matter of judgment.

1 You don't want it too high so the lid crushes it. You
2 don't want it too low so that gravel gets in it. So where
3 it comes is they thought it was too high; we cut it down.

4 CHAIRPERSON COWGER: In the interest of conserving
5 time, going through that list, what you're saying is that
6 all of those things were somewhat subject to opinion?

7 MR. BUCKHOLZ: Yeah. Well, no. Their punch list
8 items, some of the things are things that they like to do
9 in their district. Other things are things that we
10 missed. But they're not like the signals didn't work or
11 you had them wired wrong or the heads were on upside down.
12 There was nothing that -- I would definitely consider these
13 punch list items not anything that would affect the
14 functioning of the signals.

15 CHAIRPERSON COWGER: DOT, real quickly, now, because
16 we're leaving this one. Have you got any comments on that,
17 on what he just said?

18 MR. SWIATEK: No.

19 CHAIRPERSON COWGER: Okay. All right. Let's go to
20 item four, then.

21 MR. BUCKHOLZ: Well, I guess you think this is going
22 to take the most amount of time. This may be the biggest
23 priced item, but to me, it's one of the clearest-cut
24 items.

25 Technical special provisions clearly call for

1 handicap ramps to be paid for on a per each basis. The
2 plans seem to not address the issue or are in conflict with
3 it. If there is a discrepancy, the standard specs require
4 that the technical spec provision be given preeminence so
5 they would rule. And they say that you pay for it on a per
6 each basis.

7 Also, if you look in the computation book for how --
8 you know, their argument is that, listen, we were paying
9 for handicap ramps based on the way we do it nowadays,
10 sidewalk and curb, not the way that we used to do it. *

11 But if you look in their computation book, the only
12 place they have sidewalk calculated is for the island. *Wrong - C&G was shown @ only 1 inter.*
13 They don't even have it over at the curb-cut ramps at other
14 intersections. So whoever did the comp work wasn't even
15 thinking that way. So the comp book doesn't support their
16 argument that it's curb and gutter and sidewalk. And
17 neither do the specs. They should be paid for on an each
18 basis. And the bid item was missing from the plans.

19 And there is a big difference in sidewalk and
20 curb-cut ramps versus -- sidewalk and curb versus curb-cut
21 ramps. First of all, these curb-cut ramps, some of them,
22 when we were at one end, were this thick, eight, nine
23 inches thick, tapering in (indicating).

24 There's a lot more handwork that has to go into it.
25 It's not like sidewalk where you can just plow it out, form

1 it up and go. There's a lot of handwork into it, and
2 there's a lot of thickness and concrete in these.

3 CHAIRPERSON COWGER: I think the board can understand
4 that.

5 MR. BUCKHOLZ: So it's a different animal. So
6 basically we had a different -- and I priced out what it
7 would cost us to put those in, and I subtracted out what
8 the payment would have been for the sidewalk and the curb
9 and gutter that they represent, and that was simply how we
10 got the price.

11 Now, the fact that they brought it, they say they
12 brought it to our attention first at the preconstruction
13 conference makes no difference who brings it to whose
14 attention first at the preconstruction conference. The
15 fact is that it existed. X

16 We had another item in the plans that was wrong. It
17 was the pedestal to support the ped heads. They had no
18 problems when I pointed out that that was the wrong bid
19 item and changing that. We did a supplemental to get a
20 right price on that. So they had no problem changing
21 another item in the plans. And this is a very similar
22 situation here. That was a wrong bid item. This is a
23 missing bid item.

24 And we've been involved in a lot of contracts, and
25 usually there's no big fight on this. If there's a missing

1 bid item, you give them a price and that's how it goes.
2 And I don't think our price was out of line at all with
3 what these things cost. That's our case in a nutshell.

4 CHAIRPERSON COWGER: Let me ask you one question, and
5 then we'll let DOT come back and give a rebuttal. You
6 don't dispute that the curb ramps were clearly shown in the
7 plans to be constructed; the issue is how to pay for them?

8 MR. BUCKHOLZ: That's correct.

9 CHAIRPERSON COWGER: How did you treat that when you
10 bid the job?

11 MR. BUCKHOLZ: Well, the way we bid jobs is a little
12 different. I don't do the bid part. I do all the bid part
13 on the electrical work. I'm a signal guy, basically.
14 I don't know much about concrete. I have another gentleman
15 in the office who wasn't at the preconstruction conference *
16 who puts together the prices on sidewalk, curb-cut ramps
17 and all that. And unfortunately he no longer works for
18 us.

19 But the discussions that I had with him were, yeah,
20 there was a missing bid item. So what. We run into this
21 all the time. Okay. All right. So, you know --

22 CHAIRPERSON COWGER: This was after the bid, though?

23 MR. BUCKHOLZ: Yeah. This was after I went back and
24 said what's going on here. You can see there's a missing
25 bid item there. You know, they don't have a bid item for

1 these curb-cut ramps.

2 CHAIRPERSON COWGER: So your statement is basically
3 that he didn't include any costs in the curb ramps, of the
4 curb ramps, in your bid --

5 MR. BUCKHOLZ: That's correct.

6 CHAIRPERSON COWGER: -- anticipating that there would
7 be an item --

8 MR. BUCKHOLZ: Not me personally. He didn't and that
9 didn't end up in our bid. Now, whether his thinking was
10 right or not in that I don't know. But he and I in the
11 past have had situations where there were missing bid
12 items, and we don't stop our bid because there's a missing
13 bid item. We'd be stopping bids about half the time if
14 that was the case. We just go back and usually with the
15 DOT negotiate a price and go on.

16 MR. DEYO: Your statement that -- you were aware of
17 the number of curb cuts included in the plans. So your bid
18 did not take into account the construction of those?

19 MR. BUCKHOLZ: Well, there was no place to bid.
20 There was no place to bid. There was no place to put a
21 price for that item. In my discussion with him, there was
22 no place to put a price for the item.

23 MR. DEYO: Pay item?

24 MR. BUCKHOLZ: Yeah, for the pay item.

25 MR. DEYO: But you had sidewalk and --

1 MR. BUCKHOLZ: Curb and gutter. And we bid our
2 typical prices that we bid for that. Another thing you
3 have to keep in mind is that in a bidding situation, we
4 probably do five prime bids a month, six sub-bids a month.
5 And that's just on DOT work.

6 And he goes through and he sees an item, you know,
7 curb and gutter, we bid \$55 a foot or something. And he
8 sees sidewalk and it's so much a foot. And he sees
9 curb-cut ramps and he puts so much a foot. And if he looks
10 through and he sees a missing bid item and he doesn't bid
11 it, he realizes there's going to be a future supplemental
12 agreement on it. And I do, too.

13 Just like with the pedestrian poles. I knew when we
14 bid that they had the wrong bid item for the pedestrian
15 poles, but I didn't stop my bid. I mean, like I said, if
16 I did that, I'd be stopping half my bids, because almost
17 every bid, I shouldn't say every bid, but probably a
18 quarter of the bids, there's some bid item problem. So we
19 bid it and we go in and do it.

20 Now, at the time of the preconstruction conference,
21 I wasn't aware of it, because it wasn't my end of the
22 business. But as soon as I heard about it, I took it back
23 and confirmed with them that, yes, it was indeed not in
24 there. So that's our position.

25 CHAIRPERSON COWGER: Real quick question and then

1 I'll let DOT come in. Looking at the contractor's cost
2 breakdown on these ramps, I wanted to verify that the bid
3 unit price for curb and gutter was \$22 a lineal foot and
4 for the sidewalk was \$32 a square yard. Has anybody got
5 the contract they can verify that with?

6 MR. SWIATEK: He's got it.

7 CHAIRPERSON COWGER: Just somebody verify it and let
8 me know later on, if you would, please. And then we'll let
9 DOT proceed. Mr. Buckholz, that's what your intent was,
10 though, wasn't it, that those unit prices shown in this
11 cost breakdown for the curb ramps?

12 MR. BUCKHOLZ: Right. Those are off the contract.
13 The sidewalk and the curb were from the contract. *

14 CHAIRPERSON COWGER: Whenever you all get that, if
15 you could verify that that's correct, I'll let you come in
16 then. Go ahead, DOT. [^] Bid Unit Prices
S/W & C&G.

17 MR. SWIATEK: Two things that we'd like to rebut and
18 then go into a little bit more in depth what our position
19 is. First thing, we would say the comp book does break out
20 sidewalk other places than the traffic island that Jeff
21 referred to. There's specifically two different sheets in
22 the plan that show sidewalk.

23 MR. BUCKHOLZ: I'm sorry. I meant curb and gutter.
24 I said sidewalk. I meant curb and gutter. I take that
25 back.

1 MR. SWIATEK: And there is another place for him to
2 bid these items which is in curb and gutter and sidewalk.
3 And in the contract plans, there's an updated standard
4 index which has a note that specifically states that the
5 cost of the sidewalk and curb and gutter, or the cost of
6 the curb-cut ramps is included in the sidewalks and curb
7 and gutter.

8 The special provisions do have a note in there -- not
9 a note. It's a list of pay items that say this is how
10 these things will be paid. And it says curb and gutter and
11 it says -- or it says curb-cut ramps and it says per each.
12 That's a fact.

13 Our position is basically that if you go back in time
14 to the time that this bid was being put together by
15 Mr. Buckholz, he runs across an error, whether it's him or
16 his estimator, it's his company that's bidding it, it
17 doesn't really matter what his internal procedures are, he
18 has a choice of deciding to bid an item or to call it to
19 the department's attention.

20 And bidders are obliged to contact the department if
21 they find a error or discrepancy or omission in the bid.
22 Any competent bidder would do that. There were no pre-bid
23 inquiries on this project concerning curb-cut ramps.

24 MR. ROEBUCK: From any contractor?

25 MR. SWIATEK: From none. There were no pre-bid

1 inquiries on this job at all, all right? All these pre-bid
2 inquiries are handled through the district construction
3 engineer, and there's no record of pre-bid inquiry by any
4 contractor on this job. There are no clarifications.

5 MR. ROEBUCK: So no one picked it up?

6 MR. SWIATEK: No. At the preconstruction conference,
7 which is after the bid was prepared and all the costs are
8 included and the entire scope of the work is shown in the
9 plans, we didn't add curb-cut ramps. You know, we made
10 minor field adjustments after we hit the field, which is
11 normal, you know.

12 At the preconstruction conference, so that we, the
13 department, in our internal procedures, so we could prepare
14 a procedurally correct final estimate, bring out this one
15 small issue, which is really just a talking issue, "Look,
16 we've got this small estimate. We don't want to get a
17 procedural error when our final estimate gets reviewed. We
18 want to issue a change order." We change it.

19 We don't care whether we pay per each or whether we
20 pay per square yard or linear foot. It doesn't matter to
21 us. There's no opportunity here for more money to be
22 added. If we can convert it into a per each price, we'll
23 pay per each, no problem. We'll pay per square yard or per
24 lineal foot, no problem. But we won't pay both. It's an
25 opportunistic, you know, approach that Mr. Buckholz has

1 been taking, because he had no clue about it beforehand. *

2 And the cost of this claim is 25 percent of his bid.
3 To think that he would bid a job and not put 25 percent of
4 the cost in his bid is awesome. I mean, it's outrageous,
5 in my opinion, anyway. And, you know, **that's a risk that**
6 is just way too high to take. And our position is quite
7 simple.

8 His unit prices are higher than statewide average
9 prices for his kind of work for the sidewalk and curb and
10 gutter ramp, which tells us that the effort that he had to
11 put out to build these things was included in his cost.
12 And to come back and almost double or triple that amount
13 because of an administrative error is unacceptable, in our
14 opinion.

15 Additionally, the specification book says that the
16 contractor shall not take advantage of an error or omission
17 in the plans. Well, he didn't even know it was there until
18 we brought it to his attention. And for us to have to turn
19 around and pay, it's outrageous.

20 CHAIRPERSON COWGER: I think Mr. Buckholz has
21 addressed that last part of it, so we don't need to come
22 back and hear from you again on it, as to why he didn't
23 know about it at the preconstruction conference.

24 MR. BUCKHOLZ: Well, I'd like to say a couple
25 things. One is I did make a mistake. It isn't sidewalk.

1 It's curb and gutter that's only in relation to the
2 island. But it's the same argument. I mean, you're paying
3 for curb type ramps over here on sheet T-5, and there's no
4 quantity for even the curb and gutter on T-5. So it was
5 messed up from the start. Yes, the plans have those
6 statements in it, but the technical special provisions,
7 which override them, have a different statement.

8 Pre-bid inquiries, I guess, you know, we make a
9 pre-bid inquiry if we think it's something that's really
10 going to blow the whole project out of the water. But to
11 tell you the truth, I don't have time to pre-bid inquiry on
12 everything I see. And so I don't pre-bid inquiry on
13 everything I see.

14 In this case, my guy didn't tell me so I didn't
15 pre-bid inquire. He just went ahead and did the estimate.
16 Now, yeah, he does work for my company, but if I had known
17 I might have thought about a pre-bid inquiry. But still,
18 I don't do it on every project.

19 The fact our unit prices are supposedly high, this is
20 a very small job. This is a very small concrete job.
21 Obviously, when you do big quantity concrete jobs, your
22 unit prices fall. It's not surprising that our unit prices
23 are a little higher than normal. That's got nothing to do
24 with the fact that we built in for these handicap ramps at
25 all.

1 The fact that there's something that could lead to 25
2 percent of the bid, that's not my fault that the bid item
3 wasn't put in and it leads to 25 percent of the bid. It
4 may be an administrative snafu to them, but it's a big
5 dollar item to us. It's a big dollar item. There's a lot
6 more work involved in these things. We didn't have it in
7 our bid. The mistake was clearly DOT's.

8 To not take advantage of it, if the contractor should
9 never -- taking advantage of it to me would be is if I came
10 back for the handicap ramps and said they're not \$1,200
11 apiece, they're \$6,000 apiece. To me, that's taking
12 advantage. But to make come back with a fair price for the
13 handicap ramps is standard business when you're missing a
14 pay item. So I think we tried to play this by the book.

15 If we made any fault, it was the fact that my guy
16 didn't communicate to me as well as he could have the
17 missing handicap ramps. If there's any fault that we had
18 in this, it was that. But that's not nearly as bad as
19 leaving the whole thing out to begin with. And for us to
20 be economically smacked with a very large loss because of
21 that, to me seems outrageous.

22 CHAIRPERSON COWGER: Let me ask you a question. How
23 long did you have to bid this job? In other words, how
24 long did you have the contract documents or the bidding
25 documents in your hand before you submitted a bid? You

1 don't have to be precise.

2 MR. BUCKHOLZ: I would guess that we had it in our
3 hands a week before we submitted that. You see an
4 advertisement comes out. We get things through the
5 construction bulletin. They don't get things right off the
6 bat. We see it in the construction bulletin. We call the
7 number. They mail us the package. Usually we have about a
8 week to put everything together before we can Fed Ex it
9 back in. That's a typical time.

10 On this one, I couldn't promise you that was the
11 time, but that's a typical time for us to put it together.

12 CHAIRPERSON COWGER: A couple questions to DOT. Does
13 that sound like a reasonable time frame? You might think
14 it was a little bit more.

15 MR. BUCKHOLZ: For a district bid, for a district
16 bid.

17 MR. SWIATEK: They're available for 30 days,
18 I believe is the time period. I'm not in production but
19 I'm pretty sure it's --

20 MR. BUCKHOLZ: Okay. By the time we see it. For a
21 Tallahassee bid, we have longer. Tallahassee bids seem to
22 come out further in advance. But this district seemed to
23 have a ~~short period~~ of time.

24 CHAIRPERSON COWGER: Another question to DOT.
25 Suppose you would have received this notice before bids

1 were taken that there was this discrepancy. Can you
2 venture a guess even as what would have happened?

3 MR. SWIATEK: I know exactly what would have
4 happened. The district construction engineer would issue a
5 clarification letter to all the people that pulled the bid
6 plans, so that all the bidders bid on the same basis and
7 decided which way to --

8 MR. ROEBUCK: To add the bid item or to adjust your
9 curb and gutter, one? Had to do something. X

10 MR. SWIATEK: Every job that we do in our district,
11 we don't pay per each. In our basis of pay manual, there
12 is no pay item for curb cuts per each. It doesn't exist.
13 It just exists in this special provision in our district
14 contracts only. And it's been corrected since then because
15 of this.

16 CHAIRPERSON COWGER: What have you done now?

17 MR. SWIATEK: We pay for lineal foot of curb and
18 gutter and square yards of sidewalk.

19 CHAIRPERSON COWGER: You just totally dropped the
20 curb ramp out?

21 MR. SWIATEK: And the curb ramp item is dropped.
22 It's as per the standard index, which is the statewide --

23 MR. BUCKHOLZ: We used to get paid per curb-cut
24 ramp. This is not something that's never been done.

25 MR. SWIATEK: When I said that his prices were higher

1 than statewide average, that's just not, we don't just pull
2 the computer. We go back and we look for similar quantity
3 jobs. We don't just pull the 2,000 jobs in the state that
4 had sidewalk. We look for similar quantities, similar type
5 work. And there was no concrete work, sidewalk, or lineal
6 foot, or curb and gutter on this job that is not special in
7 some way, whether it's a traffic island, which is a
8 relatively small traffic island, it's not big, huge
9 quantities, or curb-cut ramps. That's the entire amount --
10 ~~it's not like we put in a mile of sidewalk and had three~~
11 ~~curb-cut ramps in it. All we had to do was install~~
12 existing curb-cut ramps in existing sidewalk.

13 So the scope of work was clearly shown on the plans.
14 There's no doubt as to the kind of work that had to go into
15 it. And if you go back and review Mr. Buckholz's comments
16 after you get the transcript, you'll see that a lot of it
17 is just sloppy bidding in his procedures. We just take
18 this and throw in a price. Well, we just take this -- you
19 know, we were just doing some administrative housekeeping
20 when we brought this to his attention.

21 And, you know, again, if you look at this, if you
22 look at it in that magnitude or in that perspective, you
23 know, it's clear that it's just an opportunistic approach
24 to get more money.

25 MR. BUCKHOLZ: Again, since we're using words like

1 sloppy now and opportunist approach, DOT made a clear error
2 in their technical special provisions, which rule over the
3 plans. That error left out a bid item. And that is --

4 MR. SWIATEK: And made a faithful effort to try to
5 correct it.

6 MR. BUCKHOLZ: That is it right there. Well, we'd
7 like to make a faithful effort to get paid for doing the
8 work. And we put in our bid for the items that you had on
9 the bid sheet. We can't go inventing bid items that should
10 have been on the bid sheet. So, again, I think it would be
11 grossly unfair not to compensate us for this substantial
12 piece of work that we did.

13 And even their own comp workbook shows where all the
14 curb and gutter goes around the island. There wasn't any
15 curb and gutter over with the curb-cut ramps on the other
16 sheet. So even whoever did the comp book could see that
17 there was a --

18 MR. SWIATEK: The comp book wasn't available at the
19 time to the contractor. He can do a --

20 MR. BUCKHOLZ: But it just verifies the nature of the
21 discrepancy.

22 MR. SWIATEK: The people that write the special
23 provisions don't do the plans. They're done at the
24 district office after the fact, so, you know, the effort of
25 the work is specifically shown on the plans and it was

1 priced accordingly.

2 CHAIRPERSON COWGER: I don't think there's any
3 dispute about that. The dispute here is how to pay for
4 it.

5 MR. BUCKHOLZ: For us to be penalized for their error
6 is just not --

7 MR. SWIATEK: We have no problem in paying per each,
8 but it would be the exact same amount.

9 CHAIRPERSON COWGER: What you want to do is you just
10 convert what you get paid for --

11 MR. SWIATEK: Absolutely.

12 MR. BUCKHOLZ: It doesn't convert exactly. Not even
13 close.

14 MR. ROEBUCK: Did we find out what the unit prices
15 were for the curb?

16 MR. EZELL: I have those. For the curb and gutter
17 it's \$22 a linear foot. And for a four-inch sidewalk, it
18 was \$32 per square yard.

19 MR. BUCKHOLZ: I can show you bids that have a lot
20 higher numbers than those.

21 CHAIRPERSON COWGER: I just wanted that information
22 and we got it. Okay. Now, let me ask a question that may
23 get into a little discussion here. DOT and the contractor,
24 would you all get before you the plans and the two sheets
25 out of the Comp book that the contractor submitted that

1 were attached to his calculation of how much he's claiming
2 for this item. While you all are doing that, I'm going to
3 declare a two-minute recess, if you will, please.

4 (Recess)

5 CHAIRPERSON COWGER: My concern is that I'm a little
6 confused about the tabulation of quantity sheets shown in
7 the plans and these sheets from the computation book.
8 First off, looking at the tabulation of quantities in the
9 plans, on sheet T-7 you show 187 feet of curb and gutter.
10 Really -- and you show nothing on sheet T-6.

11 On T-6 you're showing the island. And if you run
12 those quantities out on the island looking at the length
13 shown on the plans, you come pretty close to that 187
14 feet. So it looks to me like it was intended, and when you
15 go back and look at the computation book it verifies it, it
16 was intended that that 187 be under sheet T-6.

17 MR. DEYO: That's what the comp book says.

18 CHAIRPERSON COWGER: The comp book shows it being at
19 T-6. The detailed plans show it being at T-6. And this
20 shows it at T-7. So really, the point I'm trying to make,
21 I'm not picking at where they put it, because it all comes
22 out the same when he bids, but the point is that that 187
23 feet of curb and gutter is the exact amount for the traffic
24 islands, which leaves you nothing for the curb ramps in the
25 computation book or in the plans, either way you look at

1 it.

2 Now, when we look at the items for sidewalk, we see
3 that as far as sheet T-6 is concerned, and T-7, they
4 coincide with the comp book. And the comp book, then, for
5 T-6 shows, I believe that number is 94. Can somebody tell
6 me?

7 MR. EZELL: It's 94 square yards.

8 CHAIRPERSON COWGER: Ninety-four is the correct
9 number, right?

10 MR. EZELL: That's what they're saying, yes.

11 MR. BUCKHOLZ: For the traffic island.

12 CHAIRPERSON COWGER: That's what the plans say. So
13 whatever the difference between that and 179 is, I guess 85
14 square yards, would be allotted to the curb ramps. And at
15 T-7, 65 would be.

16 MR. BUCKHOLZ: Well, there were some other little
17 sidewalk flags and things we busted out around curb-cut
18 ramps we had to put in. I'm not sure how their inspector
19 paid for that. Just because it's not in the, the sidewalk
20 isn't in the island doesn't mean there wasn't some sidewalk
21 flags we had to do that weren't curb-cut ramps. There were
22 some sidewalks flags.

23 CHAIRPERSON COWGER: But in accordance with -- I'm
24 looking strictly at what the plans showed and what the comp
25 book that was prepared prior to the construction showed, or

1 prior to the plans being finished, really.

2 DOT, do you have any comments to make on that? It
3 just fuzzes the thing up a little bit.

4 MR. SWIATEK: Our quantities are always estimates.
5 They're not exact. And we have the right to adjust
6 quantities in the field.

7 CHAIRPERSON COWGER: Oh, obviously there's no
8 question about that.

9 MR. SWIATEK: I think that the quantities that are
10 supplied in the CES sheets, which is what the bidder is
11 looking at, he's not looking at the comp book at the time
12 of bid, when he's looking at the CES sheets, the quantities
13 are comparable enough to show a work effort required and a
14 work effort to be installed in the field and whether we
15 make adjustments in the field or not that are really
16 minor.

17 I really think the essence of this claim comes down
18 to what the bidder knew at the time he was bidding it.

19 CHAIRPERSON COWGER: Exactly.

20 MR. SWIATEK: And to make a 25 percent error,
21 I think, without asking a question or bringing it to
22 anyone's attention, I don't think that he can hold the
23 department responsible for that. He had to cover 25
24 percent of his work somewhere. And I think that that's
25 really the essence of our position on this. He covered his

1 work.

2 MR. BUCKHOLZ: There are times when we don't cover
3 our work. I mean, if I see something that's left out of a
4 plan, and I don't think it's major enough to blow the whole
5 project, and the bid item is missing, we don't bid. We
6 expect to get a supplemental agreement. We don't expect to
7 cover it with some other bid item. That has nothing to do
8 with it.

9 CHAIRPERSON COWGER: I think we understand. And keep
10 in mind that we're looking at, right at this moment we're
11 looking at what the contractor could determine when he was
12 preparing his bid, what the plans would lead him to
13 believe, the plans and the specifications. And I agree
14 with you, he didn't have access to the comp book.

15 MR. SWIATEK: One other way of looking at that, Gene,
16 it's just a different perspective on the same thing, is
17 there's a huge quantity of sidewalk in the CES sheets, so
18 if it didn't go to cover the curb-cut ramps, where did it
19 go? Because it's not shown anywhere else on the plans.
20 You know, even if you back out the traffic island, there's
21 two curb-cut ramps in the traffic island. So, I mean, our
22 position is clear. I don't have anything else to say.

23 MR. BUCKHOLZ: We've got to admit that these plans
24 stink. The fact that there's a discrepancy in the quantity
25 didn't surprise me. The fact that that means something is,

1 now you got to start guessing. And as a c
2 lose a lot of money just guessing.

3 CHAIRPERSON COWGER: Let me ask an
4 I think we're down to arguing on that. Let me ask a
5 question. In determining the final pay quantity for the
6 sidewalk and the curb at the curb-cut ramps, now, I assume
7 what was done was the number of square yards at each
8 location was, the dimensions of sidewalk at each location
9 were measured and a quantity calculated for sidewalk.

10 The same thing on the curb, measure around the curb
11 and how much new curb had to be installed. And that's what
12 we ended up with as -- now, can somebody share with the
13 board what the final pay quantities for these two pay items
14 were?

15 MR. SWIATEK: Curb and gutter, it was paid 263 lineal
16 feet.

17 CHAIRPERSON COWGER: Two sixty-three.

18 MR. SWIATEK: Sidewalk was paid 127 square yards.

19 MR. BUCKHOLZ: I see I transposed a number on my
20 calculation sheet here. But actually it works in my favor,
21 so the transposition is to the department's benefit.

22 CHAIRPERSON COWGER: Those numbers were 263 and 127.
23 Did I get them right?

24 MR. SWIATEK: Yes.

25 CHAIRPERSON COWGER: Okay. Go ahead.

1 MR. SWIATEK: The traffic island, there were changes
2 made to the traffic island. It wasn't built that large.

3 CHAIRPERSON COWGER: If you look at the plans --

4 MR. SWIATEK: These are field-measured quantities.

5 CHAIRPERSON COWGER: Yeah. That's beside the point.
6 But if you look at the plans and calculate just roughly the
7 number of square yards in that triangular cut column, it
8 isn't even close to 94 square yards. So there was a bust
9 there. I don't think that's pertinent at this point except
10 it helps explain the difference in the quantity. It had
11 nothing to do with the bidding of the job, because the
12 contractor can see that for himself. Okay.

13 DOT's position is that the contractor, and correct me
14 if I'm wrong, of course, the contractor should have
15 included all costs for construction of the curb ramp in his
16 bid unit prices for curb and gutter and sidewalk?

17 MR. SWIATEK: Yes.

18 CHAIRPERSON COWGER: That's basically what you're
19 saying?

20 MR. SWIATEK: Yes.

21 CHAIRPERSON COWGER: And the contractor's position is
22 basically, no, we anticipated that a pay item would be
23 added somewhere to pay for the curb ramps?

24 MR. BUCKHOLZ: According to the specs, there's a
25 missing bid item.

1 CHAIRPERSON COWGER: Yeah. Now, with that said, go
2 ahead.

3 MR. BUCKHOLZ: We've seen this on lots of contracts
4 on both, on the design end of it and on the construction.
5 It's nothing new, where there be a missing bid item. And
6 usually the department is happy to come to a price on it
7 and work it out. In this case, they just weren't
8 interested. It's their mistake, not ours.

9 CHAIRPERSON COWGER: Somewhere in all of this there's
10 a cost calculation. One other question. There's a cost
11 calculation which you used to arrive at the price per curb
12 pad?

13 MR. BUCKHOLZ: Right.

14 CHAIRPERSON COWGER: Which I think was, correct me if
15 I'm wrong, was 1147.50 per pad, per ramp?

16 MR. BUCKHOLZ: Sounds right. I've got so many sheets
17 of paper here, now I can't find anything. But that sounds
18 right.

19 CHAIRPERSON COWGER: But the way you put this
20 together, you calculated it per each?

21 MR. BUCKHOLZ: That's correct.

22 CHAIRPERSON COWGER: Okay. DOT, just assuming that
23 the board should, and this is a hypothetical, should find
24 that there's some compensation due for this part of the
25 claim, do you want to comment on that cost calculation

1 sheet?

2 MR. SWIATEK: Give me a minute to refresh myself.

3 CHAIRPERSON COWGER: Have you got it in front of
4 you?

5 MR. SWIATEK: Yes.

6 CHAIRPERSON COWGER: To be a little more specific,
7 this would indicate that he was dealing with each ramp as a
8 separate operation, basically. Now, I'm not going to say
9 anymore. I've probably said too much already.

10 MR. BUCKHOLZ: Are you leading the witness?

11 CHAIRPERSON COWGER: No. I was just trying to get
12 the facts out on the table, so that when the board sits
13 down to discuss this --

14 MR. BUCKHOLZ: I'd object, but I'm not a lawyer.

15 MR. DEYO: I'd object on behalf of DOT. Leading the
16 department. No comment.

17 CHAIRPERSON COWGER: I'm not leading. I'm giving the
18 opportunity to rebut something.

19 MR. DEYO: I think we're going to belabor the point.
20 It's in Mr. Buckholz's package and I think the department
21 has addressed it. And we can review the calculations.

22 MR. SWIATEK: I don't believe that these hours here
23 are probably based on anything that was actually done in
24 the field. I mean, it looks like he just took -- this is
25 what we would normally bid and then multiplied it by 15 as

1 opposed to what his actual hours were off of actual time
2 sheets in the field.

3 MR. BUCKHOLZ: Oh, I could do that, but I'm not sure
4 you'd want to go that way.

5 CHAIRPERSON COWGER: Come out more?

6 MR. BUCKHOLZ: Yeah, I think so. We got our butt
7 handed to us on this one.

8 MR. SWIATEK: The bottom line is, again, and I keep
9 repeating myself, if you put yourself in the bidder's
10 position at the time of bid, with no pre-bid inquiry, and
11 you looked at the plans and just, you know, looked at the
12 work effort required, looked at the pricing, is work effort
13 as represented in his pricing representative of the plans.

14 And, you know, through nothing but altruistic motives
15 from the DOT to correct our own internal final estimate
16 procedure we brought it to his attention. And we're being
17 taken advantage of. This was never brought to our
18 attention. We brought it to his attention.

19 We had a similar situation, like he said, on a
20 signal, a ped post, and we corrected it because it was an
21 error. I mean, we have no problem with correcting errors.
22 But we don't like to be taken advantage of.

23 MR. BUCKHOLZ: Well, we brought that one to your
24 attention.

25 MR. SWIATEK: And we corrected it.

1 MR. BUCKHOLZ: And so you brought it to our
2 attention; let's correct this one, too.

3 MR. SWIATEK: I think the magnitude of the, the
4 gamble that he took on a 25 percent of his total contract
5 bid, not putting it in his bid, I think you've got to look
6 at that and say what ~~did~~ he include. You don't leave out
7 25 percent of your work.

8 MR. DEYO: I think that point is clear.

9 MR. SWIATEK: That's as clear as I can make it.

10 CHAIRPERSON COWGER: We understand that. Does either
11 party have anything further they want to say to wrap up
12 this entire hearing?

13 MR. SWIATEK: No.

14 MR. BUCKHOLZ: No.

15 CHAIRPERSON COWGER: Hearing nothing, Mr. Roebuck --

16 MR. BUCKHOLZ: I would like to say one thing.

17 CHAIRPERSON COWGER: Sure.

18 MR. BUCKHOLZ: I would like to say this is not
19 personal with me, with Billy Ezell or anything. This is
20 business, okay, and there's nothing personal here. We
21 conduct business as a contractor. And it doesn't always
22 seem friendly, but there's nothing personal here in this.
23 This is all business.

24 MR. EZELL: I'd like to add that, indeed, nothing is
25 personal. I'm a professional. I conduct contracts

1 professionally.

2 CHAIRPERSON COWGER: Okay. Well, I didn't see any of
3 that in this, anyway.

4 MR. BUCKHOLZ: I just wanted to make sure it's not
5 interpreted wrong. We do a lot of different work for
6 District 3 and none of this is personal. This is business.

7 CHAIRPERSON COWGER: Mr. Roebuck, do you have any
8 questions?

9 MR. ROEBUCK: No.

10 CHAIRPERSON COWGER: Mr. Deyo?

11 MR. DEYO: No.

12 CHAIRPERSON COWGER: The hearing is hereby closed.
13 The board will meet to deliberate on this claim, I'm not
14 sure when, within the next few weeks, and you will have a
15 final order shortly thereafter.

16 (Whereupon, the hearing was concluded at 12:02 p.m.)

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CERTIFICATE OF REPORTER

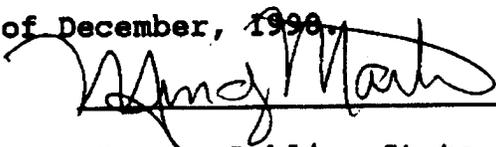
STATE OF FLORIDA)

COUNTY OF LEON)

I, MINDY MARTIN, Registered Professional Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

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

Dated this 17th day of December, 1998.



 Notary Public, State of Florida



Mindy Martin
 MY COMMISSION # CC894613 EXPIRES
 December 3, 2000
 BONDED THRU TROY FARM INSURANCE, INC.

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20 calculation sheet here. But actually it works in my favor,
21 so the transposition is to the department's benefit.

22 CHAIRPERSON COWGER: Those numbers were 263 and 127.
23 Did I get them right?

24 MR. SWIATEK: Yes.

25 CHAIRPERSON COWGER: Okay. Go ahead.