

MAR 02 2015

D3.

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Blackstone Construction LLC

Claimant

VS.

State of Arkansas, Respondent

AR Highway Transportation Dept.

Do Not Write in These Spaces		
Claim No.	15-0597-CC	
Date Filed	March 2, 2015 (Month) (Day) (Year)	
Amount of Claim \$	244,043.49	
Fund	AHTD	

COMPLAINT Refund of expenses,
Breach of contract

Blackstone Construction LLC

the above named Claimant, of PO Box 11840, Russellville

(Name)

(Street or R.F.D. & No.)

(City)

AR 72812

County of Pope

represented by Patrick Wilson & Erika Gee

(State) (Zip Code) (Daytime Phone No.)

(Legal Counsel, if any, for Claim)

of 200 W. Capitol Ave., Suite 2300 Little Rock AR 72201

501-371-0808 501-376-9442

says:

(Street and No.)

(City)

(State)

(Zip Code)

(Phone No.)

(Fax No.)

State agency involved: Arkansas State Highway and Transportation Department (AHTD) Amount sought: \$244,043.49

Month, day, year and place of incident or service: Appeal of September 3, 2014 decision of the AHTD Deputy Director/Chief Engineer, Ralph J. Hall

Explanation: Claimant is a construction company in a contractual dispute with AHTD over construction work performed on Job # 080236. Claimant bid based on plans and specifications prepared by AHTD and completed the job as agreed in 2012. However, on May 19, 2014, Claimant received a "Final Estimate" from AHTD indicating that \$244,043.49 in repayment from Claimant was requested. See Ex. A. The final estimate was followed by a June 2, 2014 letter from AHTD stating that amount owed was due to an "adjustment in final quantities." See Ex. B.

Claimant protested AHTD's unilateral adjustment of its completed job by letter of July 2, 2014, pointing out that the deduction was unjustified, as AHTD's plan quantities for "unclassified excavation and compacted embankment" appeared to differ significantly from what the actual site conditions required. See Ex. C. As authorized by Section 105.1 of the 2003 Standard Specifications for Highway Construction, which are applicable to this contract, Claimant outlined its dispute on the matter to the Resident Engineer for the project, Mr. Gary Buzbee, by letter dated July 23, 2014. See Ex. D. Claimant explained that there was a miscalculation of the quantities needed because the actual elevation of portions of the site was materially different than what was shown in the plans. Ex. D. By letter dated August 8, 2014, Mr. Buzbee denied Claimant's request to retain the full contract amount for the job it had already completed. See Ex. E.

On August 12, 2014, Claimant again attempted to cooperatively resolve the dispute with the Resident Engineer by giving additional details on the differences between the plans and the actual site conditions. See Ex. F. Mr. Buzbee summarily denied Claimant's request without comment. See Ex. G. As provided in Section 105.1, Claimant timely appealed to the AHTD Chief Engineer Ralph J. Hall. See Ex. H. Mr. Hall issued his final decision upholding Mr. Buzbee's denial on Sept. 3, 2014. See Ex. I. On February 18, 2015, Claimant paid the \$244,043.49 under protest, pending this appeal. See Ex. J.

Claimant now appeals to this Commission pursuant to Section 105.1, requesting the opportunity to demonstrate that AHTD's unilateral adjustment of the contracted price was unjustified and in violation of the Standard Specifications for this project and that the \$244,043.49 owed under the contract should be returned.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? **yes**; when? **August 20 2014**; to whom? **Deputy Director/Chief Engineer Ralph Hall, AHTD**
(Yes or No) (Month) (Day) (Year) (Department)

and that the following action was taken thereon: The claim was denied on Sept. 3, 2014.

and that \$ **0** was paid thereon: (2) Has any third person or corporation an interest in this claim? **no**; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)
and that the nature thereof is as follows: and was acquired on in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at

Little Rock

AR

(SEAL)

on this

2nd

day of

March

2015

(Date)

(Month)

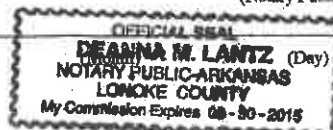
(Year)

Deanna M. Lantz

(Notary Public)

SF1-R7/99

My Commission Expires:



(Year)

Voucher Estimates

Page 1 of 3

Arkansas State Highway And transportation Department Contract Voucher Summary

AHTD Estimate Number : 0055
Contract ID: 080236
RE Office: 86

Pay Period Ending Date: 05/14/2014

Spec. Year: 2003

Description: HWY. 7-EAST (RUSSELLVILLE BYPASS) (S)
Contractor: BLACKSTONE CONSTRUCTION, LLC
P. O. BOX 11840
RUSSELLVILLE, AR 72812-1840

Time Charge: 669 Days
Contract Time: 668+5 Fixed Days
Percent Of Time: 99.41%

Projects	Federal/State Project Number	Description
080236A	C200-ARR2-044	HWY. 7-EAST (RUSSELLVILLE BYPASS) (S)
080236B	L200-ARR2-044	HWY. 7-EAST (RUSSELLVILLE BYPASS) (S)

Payment Due This Estimate: (\$244,043.49)
Awarded Contract Amount: \$16,947,528.37
Percent Of Work Completed: 101.18%

	Total To Date	Previous To Date	This Period
Participating	\$16,397,324.82	\$16,641,368.31	(\$244,043.49)
Non-Participating	\$0.00	\$0.00	\$0.00
Total Earnings	\$16,397,324.82	\$16,641,368.31	(\$244,043.49)
Materials Estimate	\$0.00	\$0.00	\$0.00
Liquidated Damages	\$0.00	\$0.00	\$0.00
Payment Adjustments	\$750,000.00	\$750,000.00	\$0.00
Totals	\$17,147,324.82	\$17,391,368.31	(\$244,043.49)

Project Number: 080236A							Est. No.: 0055			
Line Item Number	Category	Item Code	Description	Contract Quantity	Unit	Unit Price	To Date Quantity	To Date Value	This Estimate Quantity	This Estimate Value
0001	0001	201012	CLEARING	274.000	STA	\$900.00	274.000	\$246,600.00	12.000	\$10,800.00
0002	0001	201112	GRUBBING	274.000	STA	\$500.00	274.000	\$137,000.00	22.000	\$11,000.00
0003	0001	202008	REMOVAL AND DISPOSAL OF WATER WELL	1.000	EACH	\$2,000.00	1.000	\$2,000.00	1.000	\$2,000.00
0006	0001	202062	REMOVAL AND DISPOSAL OF CONCRETE DRIVEWAYS	1,101.000	SQYD	\$2.50	1,069.000	\$2,672.50	177.000	\$442.50
0007	0001	202072	REMOVAL AND DISPOSAL OF WALKS	23.000	SQYD	\$5.00	0.000	\$0.00	0.000	\$0.00
0008	0001	202084	REMOVAL AND DISPOSAL OF SIGN FOUNDATIONS	3.000	EACH	\$500.00	0.000	\$0.00	0.000	\$0.00
0009	0001	202096	REMOVAL AND DISPOSAL OF PIPE CULVERTS	147.000	EACH	\$325.00	161.000	\$52,325.00	40.000	\$13,000.00
0011	0001	202132	REMOVAL AND DISPOSAL OF GUARDRAIL	130.000	LF	\$5.00	130.000	\$650.00	130.000	\$650.00
0012	0001	202153	REMOVAL AND DISPOSAL OF LUMINAIRE POLE AND FOUNDATION	1.000	EACH	\$1,100.00	0.000	\$0.00	0.000	\$0.00
0013	0001	202164	REMOVAL AND DISPOSAL OF WELL HOUSE	1.000	EACH	\$250.00	1.000	\$250.00	1.000	\$250.00
0014	0001	202171	REMOVAL AND DISPOSAL OF BUILDINGS	9.000	EACH	\$250.00	0.000	\$0.00	0.000	\$0.00

https://www.arkansashighways.com/contractors_AHTD/ests_cont.asp

2/25/2015



0016	0001	202221	REMOVAL AND DISPOSAL OF CANOPY	1.000	EACH	\$750.00	0.000	\$0.00	0.000	\$0.00
0018	0001	210201	UNCLASSIFIED EXCAVATION	130,569.000	CUYD	\$5.00	108,265.000	\$541,325.00	-31,431.000	(\$157,155.00)
0019	0001	210601	COMPACTED EMBANKMENT	260,372.000	CUYD	\$6.00	247,877.000	\$1,487,262.00	-21,895.000	(\$131,370.00)
0022	0001	401011	TACK COAT	21,753.000	GAL	\$2.00	12,535.000	\$25,070.00	0.000	\$0.00
0033	0001	505001	PORTLAND CEMENT CONCRETE DRIVEWAY	1,238.400	SQYD	\$43.66	1,082.890	\$47,278.96	22,270	\$972.31
0038	0001	604003	SIGNS	1,474.000	SOFT	\$6.00	1,438.250	\$8,629.50	21.000	\$126.00
0039	0001	604005	SIGNS LEFT IN PLACE	35.000	SOFT	\$15.00	0.000	\$0.00	0.000	\$0.00
0041	0001	604015	BARRICADES LEFT IN PLACE	40.000	LF	\$35.00	0.000	\$0.00	0.000	\$0.00
0042	0001	604023	TRAFFIC DRUMS	1,561.000	EACH	\$35.00	1,548.750	\$54,206.25	0.000	\$0.00
0043	0001	604029	TRAFFIC DRUMS LEFT IN PLACE	10.000	EACH	\$75.00	0.000	\$0.00	0.000	\$0.00
0044	0001	604031	FURNISHING AND INSTALLING PRECAST CONCRETE BARRIER	3,607.000	LF	\$45.00	3,374.000	\$151,830.00	-100.000	(\$4,500.00)
0046	0001	604041	CONSTRUCTION PAVEMENT MARKINGS	132,175.000	LF	\$0.16	296,504.000	\$47,440.64	1.000	\$0.16
0047	0001	604051	REMOVABLE CONSTRUCTION PAVEMENT MARKINGS	1,382.000	LF	\$2.00	0.000	\$0.00	0.000	\$0.00
0048	0001	604055	REMOVAL OF CONSTRUCTION PAVEMENT MARKINGS	4,560.000	LF	\$0.50	5,133.000	\$2,566.50	0.000	\$0.00
0049	0001	604066	REMOVABLE CONSTRUCTION PAVEMENT MARKINGS (WORDS)	2.000	EACH	\$150.00	0.000	\$0.00	0.000	\$0.00
0050	0001	604067	REMOVABLE CONSTRUCTION PAVEMENT MARKINGS (ARROWS)	2.000	EACH	\$100.00	0.000	\$0.00	0.000	\$0.00
0051	0001	605002	CONCRETE DITCH PAVING (TYPE B)	961.000	SQYD	\$43.00	1,287.780	\$55,374.54	-15.130	(\$650.59)
0068	0001	632001	CONCRETE ISLAND	54.000	SQYD	\$55.00	0.000	\$0.00	0.000	\$0.00
0070	0001	637011	MAILBOX SUPPORTS (SINGLE)	67.000	EACH	\$45.00	73.000	\$3,285.00	32.000	\$1,440.00
0071	0001	719101	THERMOPLASTIC PAVEMENT MARKING YELLOW (4")	70,386.000	LF	\$0.40	72,642.000	\$29,056.80	-875.000	(\$350.00)
0073	0001	731062	TEMPORARY IMPACT ATTENUATION BARRIER (REPAIR)	1.000	EACH	\$3,000.00	0.000	\$0.00	0.000	\$0.00
0095	0009	915029	MOBILIZATION CO#	0.000	L.S.	\$951.00	1.000	\$951.00	1.000	\$951.00

Project Number: 0802368

Project Total: (\$252,393.62)

Line Item Number	Category	Item Code	Description	Contract Quantity	Unit	Unit Price	To Date Quantity	To Date Value	This Estimate Quantity	This Estimate Value
0001	0001	202001	REMOVAL AND DISPOSAL OF CURB	61.000	LF	\$2.50	0.000	\$0.00	0.000	\$0.00
0002	0001	202021	REMOVAL AND DISPOSAL OF POSTS	1.000	EACH	\$1,000.00	3.000	\$3,000.00	1.000	\$1,000.00
0004	0001	606843	55" X 40" FLARED END SECTIONS FOR REINFORCED CONCRETE ARCH	14.000	EACH	\$6,118.43	14.000	\$85,658.02	0.000	\$0.00
0006	0001	606992	SELECTED PIPE BACKFILL	1,340.000	CUYD	\$17.50	0.000	\$0.00	0.000	\$0.00
0007	0001	611003	UNDERDRAIN OUTLET PROTECTORS	21.000	EACH	\$250.00	29.000	\$7,250.00	1.000	\$250.00
0008	0001	611004	1" PIPE UNDERDRAINS	7,000.000	LF	\$9.29	5,598.000	\$51,781.50	468.000	\$4,329.00
0009	0001	615001	PAVEMENT REPAIR OVER CULVERTS (CONCRETE)	360.900	CUYD	\$250.00	336.300	\$84,075.00	0.100	\$25.00
0012	0001	619005	WIRE FENCE (TYPE D-1)	14,665.000	LF	\$3.40	4,804.000	\$16,333.60	-595.000	(\$2,023.00)
0015	0001	620011	SEEDING	60.910	ACRE	\$750.00	53.760	\$40,320.00	0.170	\$127.50

0016	0001	520021	MULCH COVER	102.880	ACRE	\$750.00	123.650	\$92,737.50	5.440	\$4,080.00
0018	0001	521001	TEMPORARY SEEDING	41.970	ACRE	\$650.00	69.070	\$44,895.50	-0.240	(\$156.00)
0019	0001	521021	SILT FENCE	30,191.000	LF	\$2.75	28,048.000	\$77,132.00	108.000	\$297.00
0020	0001	521031	SAND BAG DITCH CHECKS	4,105.000	BAG	\$8.00	6,306.000	\$50,448.00	-37.000	(\$296.00)
0021	0001	521071	SEDIMENT BASIN	667.000	CUYD	\$7.50	254.000	\$1,905.00	9.000	\$0.00
0023	0001	521111	SEDIMENT REMOVAL AND DISPOSAL	3,828.000	CUYD	\$12.50	212.000	\$2,650.00	111.000	\$1,387.50
0024	0001	521151	ROCK DITCH CHECKS	307.000	CUYD	\$26.50	29.000	\$768.50	0.000	\$0.00
0025	0001	523001	SECOND SEEDING APPLICATION	60.910	ACRE	\$450.00	0.000	\$0.00	0.000	\$0.00
0026	0001	524001	SOLID SODDING	1,184.000	SOYD	\$5.00	1,014.110	\$5,070.55	77.110	\$385.55
0027	0001	535001	ROADWAY CONSTRUCTION CONTROL	1.000	L.S.	\$20.00	1.000	\$20.00	0.500	\$10.00
0028	0001	537012	MAILBOX SUPPORTS (DOUBLE)	7.000	EACH	\$45.00	8.000	\$360.00	5.000	\$225.00
0029	0001	718001	REFLECTORIZED PAINT PAVEMENT MARKING WHITE (4")	2,158.000	LF	\$0.18	1,420.000	\$255.60	3.000	\$0.54
0030	0001	718101	REFLECTORIZED PAINT PAVEMENT MARKING YELLOW (4")	2,055.000	LF	\$0.18	1,850.000	\$333.00	856.000	\$154.08
0031	0001	719001	THERMOPLASTIC PAVEMENT MARKING WHITE (4")	71,569.000	LF	\$0.40	72,329.000	\$28,931.60	1,214.000	\$485.60
0032	0001	719005	THERMOPLASTIC PAVEMENT MARKING WHITE (12")	106.000	LF	\$2.00	198.000	\$396.00	5.000	\$10.00
0033	0001	719201	THERMOPLASTIC PAVEMENT MARKING (WORDS)	4.000	EACH	\$250.00	13.000	\$3,250.00	0.000	\$0.00
0034	0001	719202	THERMOPLASTIC PAVEMENT MARKING (ARROWS)	4.000	EACH	\$125.00	13.000	\$1,625.00	0.000	\$0.00
0035	0001	721001	RAISED PAVEMENT MARKERS (TYPE I)	1,403.000	EACH	\$5.00	0.000	\$0.00	0.000	\$0.00
0036	0001	721002	RAISED PAVEMENT MARKERS (TYPE II)	2,148.000	EACH	\$5.00	3,639.000	\$18,195.00	42.000	\$210.00
0038	0001	802018	CLASS 5 CONCRETE - ROADWAY	393.080	CUYD	\$462.00	427.710	\$197,602.02	0.080	\$36.96
0058	0008	706047	TRAFFIC SIGNAL HEAD, LED, (5 SECTION, 1 WAY)	1.000	EACH	\$1,200.00	0.000	\$0.00	0.000	\$0.00
0061	0008	708022	TRAFFIC SIGNAL CABLE (12/14 A.W.G.)	227.000	LF	\$2.75	409.000	\$1,124.75	-2.000	(\$5.50)
0076	0008	733030	VIDEO CABLE	822.000	LF	\$3.50	814.000	\$2,849.00	-40.000	(\$140.00)
0081	0001	815074	WIRE FENCE (TYPE D) CO#	0.000	LF	\$3.40	2,591.000	\$8,809.40	-200.000	(\$680.00)
0082	0001	815075	WIRE FENCE (TYPE D1) CO#	0.000	LF	\$3.80	8,283.000	\$31,475.40	-562.000	(\$2,135.60)
0083	0001	208001	FENCE REMV.& RECONSTRUCTED	0.000	LF	\$18.50	400.000	\$7,400.00	0.000	\$0.00
0092	0001	526002	EROSION CONTROL MATTING-2	0.000	SOYD	\$4.50	0.000	\$0.00	0.000	\$0.00
0093	0001	719003	THERMO.PVMT.MARK.WH (8")	0.000	LF	\$1.25	618.000	\$772.50	618.000	\$772.50
Project Total:									\$8,350.13	
Estimate Total:									\$244,043.49	

ARKANSAS STATE HIGHWAY
AND
TRANSPORTATION DEPARTMENT

Scott E. Bennett
Director
Telephone (501) 569-2000
Voice/TTY 711



P.O. Box 2261
Little Rock, Arkansas 72203-2261
Telefax (501) 569-2400
www.arkansashighways.com

June 2, 2014

Blackstone Construction, LLC
P. O. Box 11840
Russellville, AR 72812-1840

Re: Job No. 080236
FAP No. STMA-STP-ARR2 (44)
Hwy. 7-East (Russellville Bypass) (S)
Pope County

Gentlemen:

We are enclosing herewith Estimate No. 55 and Final for your review.

By copy of this letter your Surety is informed of this transmittal.

Please remit your check in the amount of \$244,043.49 due the Arkansas State Highway and Transportation Department for adjustment in final quantities.

After signing the Release in the amount of \$17,147,324.82, please return the original copy of the Release with the entire Final Estimate for further action by July 2, 2014.

Sincerely,

Mike Sebren
State Construction Engineer

MDS:RGP:sav
Enclosures

c: District Engineer
Westfield Insurance Co. (Bond No. 0077550)
Becky S. Tipton, Resident Agent

CERTIFIED MAIL NO. 7013 1090 0002 2600 2690/Return Receipt Requested



BLACKSTONE

CONSTRUCTION LLC.

PO Box 11840

Russellville, AR 72812

"An Equal Employment Opportunity Company"

July 2, 2014

Mike Sebren
State Construction Engineer
P.O. Box 2261
Little Rock, Arkansas 72203-2400

Re: Job No. 080236
FAP No. STMA-STP-ARR2 (44)
Hwy 7-East (Russellville Bypass) (S)
Pope County

Dear Mr. Sebren:

We are in receipt of your letter dated June 2, 2014 regarding the above referenced job. As you are aware, the plan quantities for unclassified excavation and compacted embanked varied greatly from the plan quantities. This job was completed in May 2012. We have begun analyzing this issue and believe there is an error in the plans that generated the plan quantities. We received the field data from the resident engineer last week and will verify our findings.

It is our intention to file a claim or request a unit price change due to differing site conditions. Per my conversations with Ron Price on June 24, 2014, please use this letter as our request to delay further processing of final quantities as we cannot sign the final release until our claim/request is settled.

Sincerely,



Morgan Barrett

Office (479) 968-1149 Fax (479) 968-8545



BLACKSTONE

CONSTRUCTION LLC.

PO Box 11840

Russellville, AR 72812

"An Equal Employment Opportunity Company"

July 23, 2014

Gary Buzbee
Resident Engineer
370 East Aspen Lane
Russellville, Ar 72802

Re: Job #080236
Hwy 7 — East (Russellville Bypass)(S)
Pope County
FAP STMA-STP-ARR2(44)

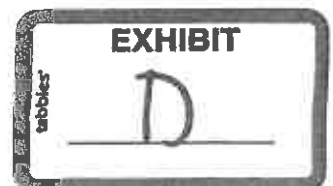
Dear Mr. Buzbee:

On June 2, 2010 Blackstone Construction submitted a bid to the Arkansas State Highway and Transportation Department for the above referenced project. As evident by the bid tabulations dated June 7, 2010, Blackstone submitted a fair and balanced bid approximately \$3.1M below the second bidder. Blackstone Construction bid the job based upon the plans and specification provided. Blackstone Construction completed the job per the plans and specifications in May of 2012. On or about May, 19, 2014 Blackstone Construction received the final estimate for the job indicating deducts of 31,341 and 21,895 for unclassified excavation and compacted embankment respectively. Upon receipt and review, Blackstone Construction requested the survey data collected by the resident engineer's office for existing ground and finished ground. Cross section were prepared to compare the survey data used for design to the survey data collected in the field (adjusted for grubbing) for calculation of job quantities (Exhibit 1). Cross sections were prepared to compare the job finished grade design to the finished grade survey data collected in the field for calculation of job quantities (Exhibit 2). Additionally, the job quantities provided in the plans and cross sections were reviewed for accuracy.

Our findings are as follows:

1. There is a significant difference between the existing ground design surface and the data collected in the field for job quantity calculation. The data collected by the resident engineer's office was adjusted for grubbing to accurately compare the two surfaces. The existing roadway is not comparable as it is off in elevation by the grubbing adjustment. It is our opinion; this difference resulted in the unclassified excavation quantity difference and deduct across the entire job. It appears the design survey is inconsistent with the field data collected in some areas.

Office (479) 968-1149 Fax (479) 968-8545



2. The job was constructed consistent with the plans as indicated by Exhibit 2.
3. Examination of compacted embankment plan quantities, cross section quantities and the deducted quantities appear to indicate an error in the calculated plan quantities. For example, sheet 293 of the cross sections, STA 16+33 and 16+50 appear to have a significant error in the calculated quantity. It is our opinion, this difference resulted in the compacted embankment quantity difference and deduct for compacted embankment.

Per 104.02(c), Blackstone Construction respectfully requests a unit price change for unclassified excavation and compacted embankment. It is our opinion, physical conditions at the site differed materially from those indicated in the contracted plans and unknown physical conditions existed as a result of design survey inconsistency and calculation errors at no fault of Blackstone Construction. Blackstone Construction requests a change in unit price to \$5.55 and \$7.10 for unclassified excavation and compacted embankment respectively.

These errors have been determined by extensive effort, time and cost to Blackstone Construction once notified of the final estimate deducts. Had the plan quantities been correct, Blackstone Construction would have bid the job accordingly to account for the significant differences in unclassified excavation throughout the job and the isolated areas of compacted embankment.

Sincerely,



Morgan Barrett

Office (479) 968-1149 Fax (479) 968-8545

ARKANSAS STATE HIGHWAY
AND
TRANSPORTATION DEPARTMENT

Scott E. Bennett
Director
Telephone (501) 569-2000
Voice/TTY 711



P.O. Box 2261
Little Rock, Arkansas 72203-2261
Telefax (501) 569-2400
www.arkansashighways.com

August 8, 2014

Mr. Morgan Barrett
Blackstone Construction, LLC.
P.O. Box 11840
Russellville, AR 72812-1840

Job No. 080236
Hwy. 7 – East (Russellville Bypass) (S)
FAP: STMA-STP-ARR2(44)
Pope County

Mr. Barrett,

Your letter dated July 23, 2014 in reference to the "Differing Site Conditions" on the above mentioned job has been reviewed by the Department. The type of material that was indicated in the plans and the type of material encountered during construction did not change. According to Section 104.02(c) of the 2003 Standard Specifications the definition of "differing site conditions" is based on "differing materially" from those indicated in the Contract and not the amounts of materials. Any differences in the amounts of materials should be addressed during the progression of the work. No written concerns of differing site conditions were received during the progression of this project.

To consider an increase in the unit price as requested, as per Section 104.02(b) of the 2003 Standard Specifications, a major item of work is defined as any bid item for which the original contract value is more than 10 percent of the total original contract value. Neither item "Unclassified Excavation" or "Compacted Embankment" qualify as major items in this contract. Therefore, your request for an increase in unit prices is denied.

As the Prime Contractor for this job you still owe the Department \$244,043.82 for underruns on this project. Please make this reimbursement as soon as possible so that this project can be finalized.

If you need additional information, please contact this office.


Gary E. Buzbee, Resident Engineer

cc: State Construction Engineer
District 8 Engineer
File



BLACKSTONE

CONSTRUCTION LLC.

PO Box 11840

Russellville, AR 72812

"An Equal Employment Opportunity Company"

August 12, 2014

Gary Buzbee
Resident Engineer
370 East Aspen Lane
Russellville, Ar 72802

Re: Job #080236
Hwy 7 — East (Russellville Bypass)(S)
Pope County
FAP STMA-STP-ARR2(44)

Dear Mr. Buzbee:

I am in receipt of your letter dated August 7, 2014 regarding your interpretation of "Differing Site Conditions". Blackstone Construction does not agree with your interpretation or reference back to Section 104.302(b) of the 2003 Standard Specifications.

Section 104.02(c) is copied below for reference. Your interpretation of "materially" is not consistent with the specification. The word "materially" is used repeatedly as an adverb in the text. Webster's defines "materially" as "to an important degree, considerably". Additionally, the specification allows for differing subsurface or latent physical conditions. Webster's defines latent as "present but not visible, apparent, or actualized; existing as potential". The errors in the plans and represented quantities were present but not apparently visible as the Department made payment for the plan quantities during construction. The Department benefited from the approximately 26% and the 9% errors in unclassified excavation and compacted embankment quantities, respectively, during the bid process.

(c) Differing Site Conditions. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is

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performed.

Upon written notification, the Engineer will investigate the conditions. If the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment that results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

You also made reference to Section 104.02(b) of the 2003 Standard Specifications. Blackstone was never notified in writing, at any time during the work of the change in contract quantities. Blackstone was made aware of the errors in quantities upon receipt of the final estimate approximately two years after completion of the work. These changes have typically been handled by change orders issued by your office. Blackstone Construction does not agree to a change in this work without a unit price change.

(b) Significant Changes in the Character of Work. The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the Surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of the work under the Contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the Contract, the altered work will be paid for as provided elsewhere in the Contract.

The term "significant change" shall be construed to apply only to the following circumstances:

- When the character of the work as altered differs*

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materially in kind or nature from that involved or included in the original proposed construction or
• *When a major item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any adjustment due to an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.*

A major item of work is defined as any bid item for which the original contract value is more than 10 percent of the total original contract value.

We reiterate our previous request in the letter dated July 23, 2014. Per 104.02(c), Blackstone Construction respectfully requests a unit price change for unclassified excavation and compacted embankment. It is our opinion, physical conditions at the site differed materially from those indicated in the contracted plans and unknown physical conditions existed as a result of design survey inconsistency and calculation errors at no fault of Blackstone Construction. Blackstone Construction requests a change in unit price to \$5.55 and \$7.10 for unclassified excavation and compacted embankment respectively.

These errors have been determined by extensive effort, time and cost to Blackstone Construction once notified of the final estimate deducts. Had the plan quantities been correct, Blackstone Construction would have bid the job accordingly to account for the significant differences in unclassified excavation throughout the job and the isolated areas of compacted embankment.

Sincerely,



Morgan Barrett

Office (479) 968-1149 Fax (479) 968-8545

ARKANSAS STATE HIGHWAY
AND
TRANSPORTATION DEPARTMENT

Scott E. Bennett
Director
Telephone (501) 569-2000
Voice/TTY 711



P.O. Box 2261
Little Rock, Arkansas 72203-2261
Telefax (501) 569-2400
www.arkansashighways.com

August 13, 2014

Mr. Morgan Barrett
Blackstone Construction, LLC.
P.O. Box 11840
Russellville, AR 72812-1840

Job No. 080236
Hwy.7 – East (Russellville Bypass) (S)
FAP: STMA-STP-ARR2(44)
Pope County

Mr. Barrett,

I am in receipt of your recent letter dated August 12, 2014 appealing my decision of a change in unit prices for Compacted Embankment and Unclassified Excavation.

Your letter has been reviewed and the decision remains as stated previously in my letter dated August 7, 2014. An increase in unit prices is denied.


Gary E. Buzbee, Resident Engineer

cc: State Construction Engineer
District 8 Engineer
File



BLACKSTONE

CONSTRUCTION LLC.

PO Box 11840

Russellville, AR 72812

"An Equal Employment Opportunity Company"

August 19, 2013

Ralph Hall
Deputy Director/Chief Engineer
PO Box 2261
Little Rock, Ar 72203

Re: Job #080236
Hwy 7 - East (Russellville Bypass)(S)
Pope County
FAP STMA-STP-ARR2(44)

RECEIVED

AUG 20 2014

DEPUTY DIRECTOR AND
CHIEF ENGINEER'S
OFFICE

Dear Mr. Hall,

Per Section 105.01 of the Standard Specifications, we are to submit a subsequent appeal to the Chief Engineer. For your review, please find the attached information related to quantity and price disputes for the above referenced job. Attached are correspondences between myself and the Resident Engineer. Also included is a comparison of the design survey to the Resident Engineer's field survey and the design compared to the Resident Engineer's as-built survey. The bid and contract documents contained errors that would have altered our bid process, work and material sourcing. The Department received significant benefit due to these errors at the expense of Blackstone. We are requesting a minor price change to recover costs associated with the underruns due to the plan and calculation errors.

If I can provide additional information that would benefit or clarify any issues, please contact me at your convenience.

Sincerely,



Morgan Barrett

Cc: Marty Clark, Brown Hiller Clark & Associates
Gary Buzbee, Resident Engineer
Luke Duffield



RECEIVED

AUG 20 2014

ASSISTANT CHIEF ENGINEER
OPERATIONS

Office (479) 968-1149 Fax (479) 968-8545

14

ARKANSAS STATE HIGHWAY
AND
TRANSPORTATION DEPARTMENT

Scott E. Bennett
Director
Telephone (501) 569-2000
Voice/TTY 711



P.O. Box 2261
Little Rock, Arkansas 72203-2261
Telefax (501) 569-2400
www.arkansashighways.com

September 3, 2014

Mr. Morgan Barrett
Blackstone Construction, LLC
Post Office Box 11840
Russellville, Arkansas 72812

Re: Job No. 080236
Hwy. 7 - East (Russellville Bypass) (S)
FAP: STMA-STP-ARR2(44)
Highway 247, Section 0
Pope County

Dear Mr. Barrett:

Reference is made to your recent letter appealing the decision of the Resident Engineer regarding a change in the unit prices for the items "Unclassified Excavation" and "Compacted Embankment" on this project.

In order to consider a change in the unit price of a contract item, there would have to be a significant change in the character of work as defined in Section 104.02 of Standard Specifications for Highway Construction, Edition of 2003. The final quantities of payment for the items "Unclassified Excavation" and "Compacted Embankment" may have decreased from the original contract quantities, however there is no evidence provided to support a change in the character of work nor is this quantity adjustment associated with a major item of work.

It has been determined that the Resident Engineer has applied the specifications appropriately, therefore, no change in unit prices is warranted at this time.

Sincerely,

Ralph J. Hall
Deputy Director and
Chief Engineer

c: Director
Assistant Chief Engineer - Operations
Construction Engineer
District 8 Engineer
Resident Engineer 86

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BLACKSTONE

CONSTRUCTION LLC.

PO Box 11840

Russellville, AR 72812

"An Equal Employment Opportunity Company"

February 18, 2015

Mike Sebren
State Construction Engineer
P.O. Box 2261
Little Rock, Arkansas 72203-2400

via email: Mike.Sebren@arkansashighways.com

Re: Job No. 080236
FAP No. STMA-STP-ARR2 (44)
Hwy 7-East (Russellville Bypass) (S)
Pope County

Dear Mr. Sebren:

Thank you for your letter of February 9, 2014. As you know, and as Blackstone has discussed with AHTD since June of 2014, the basis of the alleged overpayment claim by AHTD appears to be objections to work which Blackstone completed on Job #080236.

Blackstone respectfully continues to submit that Job #080236 was completed in full conformance with all specifications associated therewith, and that there has therefore been no overpayment. Blackstone further respectfully continues to submit that the defects complained of by AHTD are defects in the plans supplied by AHTD and not defects in the materials or workmanship provided by Blackstone. However, in response to your letter of February 9, 2014, we understand that AHTD, notwithstanding Blackstone's position that the job in question was completed fully within spec, is reaffirming its position that an alleged overpayment exists in a dollar figure which it contends is reflective of certain portions of the completed work to which AHTD objects.

Accordingly, while Blackstone asserts there has been no overpayment, take notice that a check in the amount of \$244,043.49 is being enclosed herewith in compliance with AHTD's demand. To that end, please also take notice of a claim by Blackstone for the full contract price and associated damages based on full in-spec completion of Job #080236 and based upon AHTD's requirement that, notwithstanding the forgoing, the instant funds be disgorged.



Sincerely,



Morgan Barrett

C: Gary Buzbee, Resident Engineer
Marty Clark, Brown Hiller Clark
James Streett, Streett Law Firm
Patrick Wilson, Wright, Lindsey & Jennings
Luke Duffield, Blackstone Construction

BLACKSTONE

CONSTRUCTION LLC.

AHTD JOB 080236 HWY. 7 - EAST (RUSSELLVILLE BYPASS) (S)

Original Contract Amount:

<u>Description</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Value</u>
Unclassified Excavation	130,569	\$5.00	\$652,845.00
Compacted Embankment	260,372	\$6.00	\$1,562,232.00
			<u>\$2,215,077.00</u>

Actual Quantities Performed & Amount Paid:

<u>Description</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Value</u>
Unclassified Excavation	108,265	\$5.00	\$541,325.00
Compacted Embankment	247,877	\$6.00	\$1,487,262.00
			<u>\$2,028,587.00</u>

What Blackstone would have bid with reduced quantities:

<u>Description</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Value</u>
Unclassified Excavation	108,265	\$5.50	\$595,457.50
Compacted Embankment	247,877	\$8.75	\$2,168,923.75
			<u>\$2,764,381.25</u>

Blackstone Claim Amount: (Amount would have bid - Amount Paid)

\$735,794.25

Arkansas Claims Commission

MAR 12 2015

RECEIVED
CLAIMANT

ARKANSAS STATE CLAIMS COMMISSION

BLACKSTONE CONSTRUCTION LLC

VS

CLAIM NO. 15-0597-CC

**ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT**

RESPONDENT

ANSWER

COMES THE RESPONDENT, and for its Answer to the Complaint herein states:

1. Respondent specifically denies that the Claimant is entitled to the requested amount of \$244,043.49.

2. Claimant has been paid for all of the unclassified excavation and compacted embankment work that was actually performed on Job No. 080236, according to the contract bid amounts for those items. Claimant is not entitled to an adjustment in the unit prices for those bid items under the facts of this case and Claimant is not entitled to payment for work not actually performed.

WHEREFORE, Claimant's claim should be denied and dismissed.

**ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT**

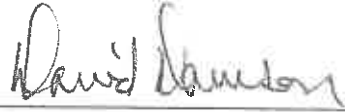
By: 

David Dawson
Staff Attorney
AHTD, Legal Division
Arkansas Bar No. 93087
P. O. Box 2261
Little Rock, AR 72203-2261
(501) 569-2277

CERTIFICATE OF SERVICE

I, David Dawson, certify that I have served the foregoing Answer upon the
Claimant by mailing a true copy of same this 11 day of March, 2015, to:

Patrick Wilson & Erica Gee
200 W. Capitol Ave., Suite 2300
Little Rock, Arkansas 72201



David Dawson

ARKANSAS STATE CLAIMS COMMISSION

BLACKSTONE CONSTRUCTION LLC

VS

CLAIM NO. 15-0597-CC

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

RESPONDENT

Arkansas Claims Commission
APR 15 2015
RECEIVED
CLAIMANT

**RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED TO CLAIMANT**

INTERROGATORY NO. 1: Please state the names, addresses, and telephone number of all persons who you believe have knowledge or information concerning the allegations in Blackstone's Complaint.

ANSWER:

INTERROGATORY NO. 2: Please state briefly the nature and substance of the knowledge each person or company listed in your response to the preceding Interrogatory.

ANSWER:

INTERROGATORY NO. 3: Please state whether or not you will present any documentary evidence at the hearing for this matter. If your answer is in the affirmative, please provide:

- a) a description of each such document you propose to introduce;
- b) the facts to be presented or described by each such document; and
- c) the names and addresses of the custodian of such documents or in lieu thereof, attach copies of any documents listed in response to this Interrogatory to your answers.

ANSWER:

REQUEST FOR PRODUCTION NO. 1:

Please produce for inspection and copying each document referred to in the preceding Interrogatory.

ANSWER:

INTERROGATORY NO. 4:

Please state the names, addresses, and telephone numbers of all persons, if any, whom you or your attorney will call as expert witness at the hearing for the matter. State briefly the nature and substance of the proposed or expected testimony of each such expert witness and the grounds for each opinion.

ANSWER:

REQUEST FOR PRODUCTION NO. 2:

Please produce for inspection and copying each expert's most recent resume and/or curriculum vitae, a written report of his/her findings upon completion, and a copy of all documents reviewed, or relied upon by each expert.

ANSWER:

INTERROGATORY NO. 5:

Please list the name of every person from whom you or someone on your behalf has taken a statement, either written or oral, by court reporter, tape recorder, or otherwise, with regard to this lawsuit or the Project that is subject of this lawsuit. For each person supply his/her address, telephone number, age, and occupation.

ANSWER:

REQUEST FOR PRODUCTION NO. 3:

Please produce for inspection and copying any and all documentation supporting your answer to the preceding Interrogatory.

ANSWER:

REQUEST FOR PRODUCTION NO. 4: Please produce for inspection and copying any non-privileged notes, memoranda, photographs, or other documents in your possession or control that relate in any way to the allegations and/or claims made in Blackstone's Complaint.

ANSWER:

REQUEST FOR PRODUCTION NO. 5: Please produce for inspection and copying all correspondences, facsimiles, agreements, emails, text message reports, or other written or electronic communication related to the Project between the following parties: Blackstone and AHTD.

ANSWER:

REQUEST FOR PRODUCTION NO. 6: Please provide all exhibits, demonstrative aids, or other things that Blackstone plans to show or introduce at the hearing in this matter.

ANSWER:

INTERROGATORY NO. 6: Please state what you believe were the plan estimated quantities for compacted embankment and unclassified excavation.

ANSWER:

INTERROGATORY NO. 7: Please state what you believe were the final quantities of compacted embankment and unclassified excavation done on Job No. 080236.

ANSWER:

REQUEST FOR PRODUCTION NO. 7: Please provide a detailed explanation and basis of how Blackstone calculated and determined its contract bid estimate unit prices for compacted embankment and for unclassified excavation.

ANSWER:

REQUEST FOR PRODUCTION NO. 8:

Please provide a detailed explanation and basis of how Blackstone would have calculated and determined its bid estimate unit prices differently for compacted embankment and for unclassified excavation, had the plan estimated quantities been near the final quantity amounts.

ANSWER:

**ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT**

By: David Dawson
David Dawson, 93087
Staff Attorney
AHTD, Legal Division
P. O. Box 2261
Little Rock, AR 72203-2261
(501) 569-2277

CERTIFICATE OF SERVICE

I, David Dawson, certify that I have served the foregoing Answer upon the Claimant by mailing a true copy of same this 14 day of April, 2015, to:

Patrick Wilson & Erica Gee
200 W. Capital Ave., Suite 2300
Little Rock, Arkansas 72201

David Dawson
David Dawson

Arkansas
State Claims Commission
JUN 03 2015

RECEIVED
CLAIMANT

ARKANSAS STATE CLAIMS COMMISSION

BLACKSTONE CONSTRUCTION, LLC

VS.

CLAIM NO. 15-0597-CC

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

RESPONDENT

**BLACKSTONE'S RESPONSES TO RESPONDENT'S FIRST SET
OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Claimant Blackstone Construction, LLC ("Blackstone"), for its responses to respondent's first set of interrogatories and requests for production of documents, states:

INTERROGATORY NO. 1: Please state the names, addresses and telephone number of all persons who you believe have knowledge or information concerning the allegations in Blackstone's Complaint.

RESPONSE: Claimant has not yet completed all fact development in this matter, as discovery has just begun and continues, and it reserves the right to supplement this answer at a later date. To date, it has identified the following persons:

- a. Stephen Baughn, Blackstone, 444 Hedgepath Road, Russellville, AR 72802, PO Box 11840 Russellville, AR 72812, 479-968-1149;
- b. Luke Duffield, Blackstone, 444 Hedgepath Road, Russellville, AR 72802, PO Box 11840 Russellville, AR 72812, 479-968-1149;
- c. Max Mathis, Blackstone, 444 Hedgepath Road, Russellville, AR 72802, PO Box 11840 Russellville, AR 72812, 479-968-1149;

- d. Paul Mlakar, Blackstone, 444 Hedgepath Road, Russellville, AR 72802, PO Box 11840 Russellville, AR 72812, 479-968-1149;
- e. Morgan Barrett, Consultant to Blackstone, 608 West B Street, Russellville, AR 72801, 479-968-5005;
- f. Jim Bowden, Bowden Specialties, 135 Midway Dr., Russellville, AR 72802, 479-967-3127;
- g. Brian Miller, Bowden Specialties, 135 Midway Dr., Russellville, AR 72802, 479-967-3127;
- h. Unknown representative of C. Watts & Sons Construction Co. Inc., 1305 S. Rockwell, Oklahoma City, OK 73128, 405-787-2377;
- i. Mike Sebren, State Construction Engineer, AHTD, P.O. Box 2261, Little Rock, AR 72203-2400,
- j. Other unknown representatives of AHTD.

INTERROGATORY NO. 2: Please state briefly the nature and substance of the knowledge each person or company listed in your response to the preceding Interrogatory.

RESPONSE: All Blackstone persons identified in the response to Interrogatory No. 1 have knowledge regarding the bidding and project management for the project at issue in this case. Mr. Barrett also has knowledge of the quantities of materials used on the project. Bowden Specialties and C. Watts were dirt subcontractors on the project and thus have knowledge of site conditions, the quantities required for the project, and their unit prices.

INTERROGATORY NO. 3: Please state whether or not you will present any documentary evidence at the hearing for this matter. If your answer is in the affirmative, please provide:

- a) A description of each such document you propose to introduce;
- b) The facts to be presented or described by each such document; and
- c) The names and addresses of the custodian of such documents or in lieu thereof, attach copies of any documents listed in response to this Interrogatory to your answers.

RESPONSE: Yes. It is not known at this time what documentary evidence Blackstone will present at the hearing, as discovery has just begun and continues. Subject to and without waiving that statement, at this time Blackstone knows that it will use the bid documents and plans provided by AHTD for the project at issue, correspondence between Blackstone and AHTD, documents on the unit prices from Bowden Specialties and C. Watts and other documents from those subcontractors, and other documentation of Blackstone. Blackstone will supplement this response in accord with the Arkansas Rules of Civil Procedure and/or any applicable Claims Commission rules.

REQUEST FOR PRODUCTION NO. 1: Please produce for inspection and copying each document referred to in the preceding Interrogatory.

RESPONSE: Please see response to Interrogatory No. 3. Blackstone understands that AHTD has its own documents. Blackstone provided AHTD with correspondence between Blackstone and AHTD by its counsel's emails to Mike

Sebren of AHTD dated March 2, 2015. Those documents are on the attached disk Bates numbered "Blackstone 0001 to 0234." Blackstone is attempting to gather documents from subcontractors Bowden Specialties and C. Watts. The attached disk contains Bowden documents Bates numbered "Blackstone 0235 to 0237." Blackstone will supplement this response in accord with the Arkansas Rules of Civil Procedure and/or any applicable Claims Commission rules.

INTERROGATORY NO. 4: Please state the names, addresses and telephone numbers of all persons, if any, whom you or your attorney will call as expert witness at the hearing for the matter. State briefly the nature and substance of the proposed or expected testimony of each such expert witness and the grounds for each opinion.

RESPONSE: It is not known at this time whether Blackstone will need a third-party expert witness at the hearing on this matter, as discovery has just begun and continues. However, at this time Blackstone can state that the testimony of Mr. Barrett, Mr. Mlakar, Mr. Bowden, and a representative of C. Watts may in some respects be considered expert testimony. They are identified above. In the event Blackstone does decide to call a third-party expert witness at the hearing, Blackstone will supplement this response in accord with the Arkansas Rules of Civil Procedure and/or any applicable Claims Commission rules.

REQUEST FOR PRODUCTION NO. 2: Please produce for inspection and copying each expert's most recent resume and/or curriculum vitae, a written report

of his/her findings upon completion, and a copy of all documents reviewed, or relied upon by each expert.

RESPONSE: To the extent of the testimony of the persons identified in response to Interrogatory No. 4 constitutes expert testimony, Blackstone states those persons have not done written reports or reviewed or relied upon documents to do so. Curriculum vitae for Mr. Barrett and Mr. Mlakar are on the attached disk and Bates numbered "Blackstone 0238 to 0242." Blackstone does not believe Mr. Bowden or the unknown representative of C. Watts will have curriculum vitae.

INTERROGATORY NO. 5: Please list the name of every person from whom you or someone on your behalf has taken a statement, either written or oral, by court reporter, tape recorder, or otherwise, with regard to this lawsuit or the Project that is subject of this lawsuit. For each person supply his/her address, telephone number, age, and occupation.

RESPONSE: Objection. Interrogatory No. 5's request for such statements seeks documents that would have prepared in anticipation of litigation, and those documents are therefore protected from disclosure by the attorney work product doctrine. Subject to and without waiving that objection, Blackstone states it does not have any such "recorded statements" as that term is described in Interrogatory No. 5 and common usage. Emails and other correspondence between Blackstone and AHTD could be considered "statements" responsive to this interrogatory. Those emails and other correspondence were included in the emails to Mr. Sebren of March 2, 2015, or will be produced by a supplemental response.

REQUEST FOR PRODUCTION NO. 3: Please produce for inspection and copying any and all documentation supporting your answer to the preceding Interrogatory.

RESPONSE: Please see response to Interrogatory No. 5.

REQUEST FOR PRODUCTION NO. 4: Please produce for inspection and copying any non-privileged notes, memoranda, photographs, or other documents in your possession or control that relate in any way to the allegations and/or claims made in Blackstone's Complaint.

RESPONSE: Objection. Request for Production No. 4 is overly broad and unduly burdensome. Subject to and without waiving those objections, please see response to Interrogatory No. 3 and the related request for production.

REQUEST FOR PRODUCTION NO. 5: Please produce for inspection and copying all correspondence, facsimiles, agreements, emails, text message reports, or other written or electronic communication related to the Project between the following parties: Blackstone and AHTD.

RESPONSE: Objection. Request for Production No. 5 is overly broad and unduly burdensome. Subject to and without waiving those objections, please see response to Interrogatory No. 3 and the related request for production.

REQUEST FOR PRODUCTION NO. 6: Please provide all exhibits, demonstrative aids, or other things that Blackstone plans to show or introduce at the hearing in this matter.

RESPONSE: Please see response to Interrogatory No. 3 and the related request for production.

INTERROGATORY NO. 6: Please state what you believe were the plan estimated quantities for compacted embankment and unclassified excavation.

RESPONSE: Those quantities are as stated in the bid documents.

INTERROGATORY NO. 7: Please state what you believe were the final quantities of compacted embankment and unclassified excavation done on Job No. 080236.

RESPONSE: Those quantities are as stated in the final estimate, which quantities Blackstone believes are reasonably accurate.

REQUEST FOR PRODUCTION NO. 7: Please provide a detailed explanation and basis of how Blackstone calculated and determined its contract bid estimate unit prices for compacted embankment and for unclassified excavation.

RESPONSE: Blackstone elected to utilize two subcontractors for earthwork on this project. Bowden Specialties was used on the "west" portion of the job, and C.Watts was used on the "east" portion of the job. Blackstone decided the dividing line of responsibility between the two subcontractors would be the Duffield Gravel Company south quarry entrance. Blackstone calculated a weighted average based on the appropriate volumetric distribution of work from each subcontractor's unit price and applied a margin for its bid unit price.

REQUEST FOR PRODUCTION NO. 8: Please provide a detailed explanation and basis of how Blackstone would have calculated and determined its

bid estimate unit prices differently for compacted embankment and for unclassified excavation, had the plan estimated quantities been near the final quantity amounts.

RESPONSE: As the general contractor, Blackstone would have used the same rationale and method to obtain the unit bid price. However, the differing site conditions would have necessitated unit price changes. Based on Blackstone's analysis and subcontractor input, it is reasonable to estimate the unit prices would have been:

Item	Description	QTY	Units	Blackstone	Cost
210201	UNCLASSIFIED	108,265	CUYD	\$5.50	\$595,457.50
210601	COMPACTED	247,877	CUYD	\$8.75	\$2,168,923.75

Blackstone believes these quantities and costs to be substantially correct based on the information available to it. These quantities are based in part on unit price information from Bowden Specialties and C. Watts. Blackstone notes that its additional calculations done since it filed its complaint with the Claims Commission have revealed that the costs to Blackstone, and thus its total claim in this matter, have increased from approximately \$244,000 to \$595,457.50. Should additional information become available, Blackstone reserves its right to supplement this response.

Blackstone reserves the right to supplement the answers and responses contained herein if additional information becomes available.

Respectfully submitted,

WRIGHT, LINDSEY & JENNINGS, LLP
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201
(501) 371-0808
FAX: (501) 376-9442
Email: pwilson@wlj.com
ege@wlj.com

By: Patrick D. Wilson
Patrick D. Wilson (99073)
Erika R. Gee (2001196)

*Attorneys for Claimant
Blackstone Construction, LLC*

CERTIFICATE OF SERVICE

On June 2, 2015, a paper and electronic copy of the foregoing
was served by U.S. mail on:

David Dawson, Staff Attorney
AHTD, Legal Division
PO Box 2261
Little Rock AR 72203-2261

Patrick D. Wilson
Patrick D. Wilson

Arkansas
State Claims Commission
JUL 28 2015

ARKANSAS STATE CLAIMS COMMISSION

BLACKSTONE CONSTRUCTION, LLC

RECEIVED
CLAIMANT

VS.

CLAIM NO. 15-0597-CC

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

RESPONDENT

**BLACKSTONE'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Claimant Blackstone Construction, LLC ("Blackstone") propounds the following interrogatories and requests for production of documents to respondent Arkansas State Highway and Transportation Department ("AHTD"):

INTERROGATORY NO. 1: Please state the full name, address, and telephone number for each person who in any way assisted in responding to these interrogatories and requests for production.

INTERROGATORY NO. 2: Please state the name, work address, job title, and telephone number of each and every individual that has any knowledge of the facts alleged in Blackstone's complaint. For each such individual listed, please give a concise but complete statement as to the nature and substance of that individual's information.

INTERROGATORY NO. 3: Please list the name, work address, and telephone number of each and every individual that you intend to call as a witness at the hearing of this matter. For each such individual listed, please state the nature and substance of that person's information, knowledge, and/or belief.

INTERROGATORY NO. 4: Please list and describe each and every chart, graph, document, exhibit, and/or any type of physical or real evidence/exhibit to be displayed and/or introduced at trial. For each such item listed, please state the facts to be presented or described by each such document or item and the name and address of the custodian of that document or item.

REQUEST FOR PRODUCTION NO. 1: Please produce everything, including demonstrative evidence, which you will or may offer into evidence at the hearing of this case and state how it is relevant to the issue with respect to which you will attempt to introduce it into evidence.

INTERROGATORY NO. 5: Do you intend to call any individual as an expert witness? If so, please state that person's name, work address, and phone number. Additionally, please provide a concise but complete statement as to the nature and substance of that individual's information.

INTERROGATORY NO. 6: With respect to each person identified in your answer to the preceding interrogatory as an expert witness, state his or her occupation, the educational and professional qualifications and credentials that will qualify him or her to testify as an expert witness in this case, the subject matter about which you expect him or her to testify, the facts and opinions to which he or she will testify, and the bases for each opinion he or she will give.

REQUEST FOR PRODUCTION NO. 2: Please produce each and every document you have provided to any expert witness(es) identified in your response to

interrogatory no. 5 and each and every document such expert witness(es) have provided to you.

INTERROGATORY NO. 7: Has AHTD ever been a party to a civil action or matter before the Arkansas State Claims Commission involving claims that the documents used to solicit bids for a project were in any way inaccurate? If so, for each such matter, please state:

- a) the name of the claimant, the date of the filing and the number of the civil action or Claims Commission matter; and,
- b) the name, address, and telephone number of the attorney for the claimant.

INTERROGATORY NO. 8: Has AHTD ever been a party to a civil action or matter before the Arkansas State Claims Commission on any claim involving the Resident Engineer on the subject project? If so, for each such matter, please state:

- a) the name of the claimant, the date of the filing and the number of the civil action or Claims Commission matter; and,
- b) the name, address, and telephone number of the attorney for the claimant.

INTERROGATORY NO. 9: State whether you, your attorneys, and/or representatives have obtained any statements of any type, whether written, recorded and/or otherwise from any person or entity, including Blackstone, relative to the facts at issue in this matter. If so, for each such statement, please state the following:

- a) the name, present address, and telephone number of each person making such statement;
- b) the date and place where each such statement was made;
- c) the type of each such statement, i.e. written, recorded and/or other type; and
- d) the name, present address, and telephone number of the person with custody of each such statement.

REQUEST FOR PRODUCTION NO. 3: Please produce all statements by persons identified in your response to the preceding interrogatory.

REQUEST FOR PRODUCTION NO. 4: Please produce the complete contract for Blackstone's work on the subject project.

REQUEST FOR PRODUCTION NO. 5: Please produce the specifications for the work on the subject project.

REQUEST FOR PRODUCTION NO. 6: Please produce all bid documents on the subject project.

REQUEST FOR PRODUCTION NO. 7: Please produce all plans for the subject project.

REQUEST FOR PRODUCTION NO. 8: Please produce any correspondence between Blackstone and AHTD on the subject project.

REQUEST FOR PRODUCTION NO. 9: Please produce any documents on the unit prices on the subject project.

REQUEST FOR PRODUCTION NO. 10: Please produce for inspection and copying any notes, memoranda, photographs, or other documents in your possession or control that relate in any way to the allegations and/or claims made in Blackstone's complaint or AHTD's answer.

INTERROGATORY NO. 10: Please state what AHTD believes were the plan estimated quantities for compacted embankment and unclassified excavation.

INTERROGATORY NO. 11: Please state what you believe were the final quantities of compacted embankment and unclassified excavation on the subject project.

INTERROGATORY NO. 12: Please state the name, work address, job title, and telephone number of each and every individual of AHTD or agent of AHTD that in any way worked with or assisted in the production of the bid documents, plans, or other documents related to the subject project.

INTERROGATORY NO. 13: Do you disagree or take issue with Blackstone's response to request for production no. 8, which response was served on June 2, 2015? If your response is in the affirmative, please state the basis for the disagreement or issue.

REQUEST FOR PRODUCTION NO. 11: Please produce any documents that relate in any way to your response to the preceding interrogatory.

INTERROGATORY NO. 14: Will you supplement your answers to these interrogatories and requests for production of documents upon your receipt of any information which would alter, amend, or supplement your previous answers?

Respectfully submitted,

WRIGHT, LINDSEY & JENNINGS, LLP
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201
(501) 371-0808
FAX: (501) 376-9442
Email: pwilson@wlj.com
ege@wlj.com

By: Patrick D. Wilson
Patrick D. Wilson (99073)
Erika R. Gee (2001196)

*Attorneys for Claimant
Blackstone Construction, LLC*

CERTIFICATE OF SERVICE

On July 17, 2015, a paper and electronic copy of the foregoing was served by U.S. mail on:

David Dawson, Staff Attorney
AHTD, Legal Division
PO Box 2261
Little Rock AR 72203-2261

Patrick D. Wilson
Patrick D. Wilson



WRIGHT LINDSEY JENNINGS

200 West Capitol Avenue, Suite 2300 Little Rock, AR 72201-3899 Main 501.371.0808 Fax 501.376.9442 wlj.com

Erika Gee
ATTORNEY

Direct: 501.212.1305 | egee@wlj.com

Arkansas
State Claims Commission
JUL 29 2015
RECEIVED

July 28, 2015

Ms. Brenda Wade, Director
Arkansas State Claims Commission
101 E. Capitol Ave., Suite 410
Little Rock AR 72201

RE: *Blackstone Construction LLC v. AR Highway Dept*
Claim # 15-0597-CC

Dear Ms. Wade:

As we discussed via telephone on July 24, 2015, my client Blackstone Construction, LLC ("Blackstone") has discovered a need to amend the amount of the above-referenced claim against the Arkansas Highway and Transportation Department ("AHTD"), originally filed on March 2, 2015.

Pursuant to your instructions, please allow this letter to amend the amount claimed from the original total of \$244,043.49 to an amended total of \$595,457.50. The amended amount represents the original claim to recover the \$244,043.49 AHTD recouped from my client after the job was completed, plus the \$351,414.01 difference in the amount that would have been bid for the compacted embankment portion of the job, if the plan estimate quantities had been accurate regarding the amount of embankment needed for the project.

Specifically, AHTD's plans called for significantly more compacted embankment than was actually required by the site. Blackstone and its subcontractor had prepared the bid for this portion of the contract by incorporating the fixed labor and equipment costs into the per unit material price, using AHTD's plan numbers. Due to AHTD's error, much less material was used, so Blackstone and its subcontractor were not able to recoup all of their fixed costs in the per unit price paid for embankment. The amendment seeks to recover the difference between the amount paid and what would have been paid if AHTD had correctly prepared the plans. In other words, to recover the amount of AHTD's unfair benefit due to their error.

Thank you again for your assistance.

July 28, 2015
Page 2

Cordially,

WRIGHT, LINDSEY & JENNINGS LLP

A handwritten signature in black ink, appearing to read 'Erika Gee', with a long horizontal flourish extending to the right.

Erika Gee

ERG/ch

cc: David Dawson, AHTD

AUG 26 2015

RECEIVED
CLAIMANT

ARKANSAS STATE CLAIMS COMMISSION

BLACKSTONE CONSTRUCTION, LLC

vs.

CLAIM NO. 15-0597-CC

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

RESPONDENT

RESPONDENT'S ANSWERS TO
BLACKSTONE'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes Respondent, Arkansas State Highway and Transportation Department, and for its answers to the following interrogatories and requests for production of documents, states:

INTERROGATORY NO. 1: Please state the full name, address, and telephone number for each person who in any way assisted in responding to these interrogatories and requests for production.

ANSWER: David Dawson, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Dwayne Cale, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Ron Price, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Mark Umeda, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Gary Buzbee, 370 E. Aspen Lane, Russellville, AR 72802, 479-968-1257; Joe Knight, 370 E. Aspen Lane, Russellville, AR 72802, 479-968-1257; Michelle Davenport, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Trinity Smith, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Jared Wiley, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; David Hall, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Mike Sebren, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000.

INTERROGATORY NO.2: Please state the name, work address, job title, and telephone number of each and every individual that has any knowledge of the facts

alleged in Blackstone's complaint. For each such individual listed, please give a concise but complete statement as to the nature and substance of that individual's information.

ANSWER: Gary Buzbee, 370 E. Aspen Lane, Russellville, AR 72802, 8479-968-1257, has knowledge of the work performed during the construction and that no claim was ever submitted for change of conditions and has knowledge of the Department's response to Claimant after demand was made to return of the overpayment;

Joe Knight, 370 E. Aspen Lane, Russellville, AR 72802, 8479-968-1257, has knowledge of the work performed during the construction and that no claim was ever submitted for change of conditions;

David Tolleson, P.O. Box 70, Russellville, AR 72811, 479-968-2286, has knowledge of the work performed during the construction and that no claim was ever submitted for change of conditions;

Scott Mullis, P.O. Box 70, Russellville, AR 72811, 479-968-2286, has general knowledge of the work performed during the construction and that no claim was ever submitted for change of conditions;

Dwayne Cale, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000, has knowledge of the Department's response to Claimant after demand was made to return the overpayment;

Ralph Hall (retired), P.O. Box 2261, Little Rock, AR 72203, 501-569-2000, has knowledge of the Department's response to Claimant after demand was made to return the overpayment;

Jerry Trotter, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000, has general knowledge of payment and progress during performance of the construction;

Teresa Wright, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000, has general knowledge of payment and progress during performance of the construction;

Mike Sebren, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000, has knowledge of the Department's response to Claimant after demand was made to return the overpayment.

INTERROGATORY NO.3: Please list the name, work address, and telephone number of each and every individual that you intend to call as a witness at the hearing of this matter. For each such individual listed, please state the nature and substance of that person's information, knowledge, and/or belief.

ANSWER: This information has not been fully determined at this time. It is anticipated that Gary Buzbee and Joe Knight will be called to testify. Respondent will supplement this answer if additional witnesses are determined as discovery progresses.

INTERROGATORY NO.4: Please list and describe each and every chart, graph, document, exhibit, and/or any type of physical or real evidence/exhibit to be displayed and/or introduced at trial. For each such item listed, please state the facts to be presented or described by each such document or item and the name and address of the custodian of that document or item.

ANSWER: This information has not been fully determined at this time. It is anticipated that Respondent may introduce Specification sections 102, 104 and 105.18, final estimates for compacted embankment and unclassified excavation, and correspondence between Claimant and Respondent regarding overpayment, claim, etc. Respondent will supplement this answer if additional evidence or exhibits are determined.

REQUEST FOR PRODUCTION NO. 1: Please produce everything, including demonstrative evidence, which you will or may offer into evidence at the hearing of this

case and state how it is relevant to the issue with respect to which you will attempt to introduce it into evidence.

RESPONSE: See attached.

INTERROGATORY NO. 5: Do you intend to call any individual as an expert witness? If so, please state that person's name, work address, and phone number. Additionally, please provide a concise but complete statement as to the nature and substance of that individual's information.

ANSWER: It is not known at this time whether Respondent will need a third-party expert witness at the hearing of this matter, as discovery is continuing to proceed. Some testimony of any Respondent witness, who is an engineer with the AHTD, may constitute expert testimony. In the event Respondent does decide to call a third-party expert witness at the hearing, Respondent will supplement this responds in accord with the Arkansas Rules of Civil Procedure.

INTERROGATORY NO.6: With respect to each person identified in your answer to the preceding interrogatory as an expert witness, state his or her occupation, the educational and professional qualifications and credentials that will qualify him or her to testify as an expert witness in this case, the subject matter about which you expect him or her to testify, the facts and opinions to which he or she will testify, and the bases for each opinion he or she will give.

ANSWER: This will be provided if any third-party experts are identified.

REQUEST FOR PRODUCTION NO. 2: Please produce each and every document you have provided to any expert witness(es) identified in your response to interrogatory no. 5 and each and every document such expert witness(es) have

provided to you.

RESPONSE: Respondent has not provided any specific documents to any witness identified in response to interrogatory no. 5. This will be supplemented if any third-party experts are identified.

INTERROGATORY NO. 7: Has AHTD ever been a party to a civil action or matter before the Arkansas State Claims Commission involving claims that the documents used to solicit bids for a project were in any way inaccurate? If so, for each such matter, please state:

- a) the name of the claimant, the date of the filing and the number of the civil action or Claims Commission matter; and,
- b) the name, address, and telephone number of the attorney for the claimant.

ANSWER: Cameron Construction, March 5, 2012, 12-0662-CC, Jack East III – 2725 Cantrell Road, Ste. 202, Little Rock, AR 72202; Delta Asphalt, January 20, 2012, 12-0542-CC, Jack East III – 2725 Cantrell Road, Ste. 202, Little Rock, AR 72202; Duit Construction, May 5, 2011, 11-0687-CC, Jack East III – 2725 Cantrell Road, Ste. 202, Little Rock, AR 72202.

INTERROGATORY NO.8: Has AHTD ever been a party to a civil action or matter before the Arkansas State Claims Commission on any claim involving the Resident Engineer on the subject project? If so, for each such matter, please state:

- a) the name of the claimant, the date of the filing and the number of the civil action or Claims Commission matter; and,
- b) the name, address, and telephone number of the attorney for the claimant.

ANSWER: No.

INTERROGATORY NO. 9: State whether you, your attorneys, and/or representatives have obtained any statements of any type, whether written, recorded and/or otherwise from any person or entity, including Blackstone, relative to the facts at issue in this matter. If so, for each such statement, please state the following:

- a) the name, present address, and telephone number of each person making such statement;
- b) the date and place where each such statement was made;
- c) the type of each such statement, i.e. written, recorded and/or other type; and
- d) the name, present address, and telephone number of the person with custody of each such statement.

ANSWER: Respondent is unaware of any such statements.

REQUEST FOR PRODUCTION NO. 3: Please produce all statements by persons identified in your response to the preceding interrogatory.

RESPONSE: N/A.

REQUEST FOR PRODUCTION NO. 4: Please produce the complete contract for Blackstone's work on the subject project.

RESPONSE: This is contained within the file for Job 080236, located at Respondent's office in Little Rock. The entire file for Job 080236 will be made available for Claimant's Counsel to inspect at a mutually agreed upon time at Respondent's Little Rock office. Copies of selected documents can be provided to Claimant's Counsel. A copy of the Contract is attached hereto.

REQUEST FOR PRODUCTION NO. 5: Please produce the specifications for the work on the subject project.

RESPONSE: This is contained within the file for Job 080236, located at Respondent's office in Little Rock. The entire file for Job 080236 will be made available for Claimant's Counsel to inspect at a mutually agreed upon time at Respondent's Little Rock office. Copies of selected documents can be provided to Claimant's Counsel. Additionally, a copy of the Standard Specifications for Highway Construction, Arkansas State Highway and Transportation Department, Edition of 2003, can be obtained from Respondent at a price of \$10 per copy.

REQUEST FOR PRODUCTION NO. 6: Please produce all bid documents on the subject project.

RESPONSE: This is contained within the file for Job 080236, located at Respondent's office in Little Rock. The entire file for Job 080236 will be made available for Claimant's Counsel to inspect at a mutually agreed upon time at Respondent's Little Rock office. Copies of selected documents can be provided to Claimant's Counsel. Copies of bid documents are attached hereto.

REQUEST FOR PRODUCTION NO. 7: Please produce all plans for the subject project.

RESPONSE: This is contained within the file for Job 080236, located at Respondent's office in Little Rock. The entire file for Job 080236 will be made available for Claimant's Counsel to inspect at a mutually agreed upon time at Respondent's Little Rock office. Copies of selected documents can be provided to Claimant's Counsel. A set of plans for Job 080236 is attached hereto.

REQUEST FOR PRODUCTION NO. 8: Please produce any correspondence between Blackstone and AHTD on the subject project.

RESPONSE: This is contained within the file for Job 080236, located at Respondent's office in Little Rock. The entire file for Job 080236 will be made available for Claimant's Counsel to inspect at a mutually agreed upon time at Respondent's Little Rock office. Copies of selected documents can be provided to Claimant's Counsel.

REQUEST FOR PRODUCTION NO. 9: Please produce any documents on the unit prices on the subject project.

RESPONSE: Objection, as this request is too vague, unspecific and would be overly burdensome for Respondent to attempt to glean from the voluminous amount of documents contained within the construction job file. Respondent needs a more specific request. This information may be contained within the file for Job 080236, located at Respondent's office in Little Rock. The entire file for Job 080236 will be made available for Claimant's Counsel to inspect at a mutually agreed upon time at Respondent's Little Rock office. Copies of selected documents can be provided to Claimant's Counsel.

REQUEST FOR PRODUCTION NO. 10: Please produce for inspection and copying any notes, memoranda, photographs, or other documents in your possession or control that relate in any way to the allegations and/or claims made in Blackstone's complaint or AHTD's answer.

RESPONSE: Objection to the extent that this information requests items protected as attorney/client communications or attorney work product. Relevant

information may be contained within the file for Job 080236, located at Respondent's office in Little Rock. The entire file for Job 080236 will be made available for Claimant's Counsel to inspect at a mutually agreed upon time at Respondent's Little Rock office. Copies of selected documents can be provided to Claimant's Counsel.

INTERROGATORY NO. 10: Please state what AHTD believes were the plan estimated quantities for compacted embankment and unclassified excavation.

ANSWER: Compacted Embankment – 130,569. Unclassified Excavation – 260,372.

INTERROGATORY NO. 11: Please state what you believe were the final quantities of compacted embankment and unclassified excavation on the subject project.

ANSWER: Compacted Embankment – 108,265. Unclassified Excavation – 247,877.

INTERROGATORY NO. 12: Please state the name, work address, job title, and telephone number of each and every individual of AHTD or agent of AHTD that in any way worked with or assisted in the production of the bid documents, plans, or other documents related to the subject project.

ANSWER: Michael Fugett, Asst. Chief Engineer/Design, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Michael Ray Jones, Bridge Management Engineer, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Trinity Smith, Division Head – Roadway Design, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Mitzi Dunn, Office Admin. Asst. III, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Tammy Goshien, Admin Officer II, P.O. Box 2261, Little Rock, AR 72203, 501-569-2000; Bill Bradberry, Staff Planning Engineer (retired); Pat Bending, Admin. Asst. I (retired); Everlena Owens, Programs &

Contracts Tech II (retired); Kit Carson, Division Head – Surveys (retired); Carl Lendstrom, Asst. Div. Head – Surveys (retired); Ferrell Adams, Section Head – Photogrammetry (retired); James Montgomery, PS, B&F Engineering, 928 Airport Road, Hot Springs, AR 71913, 501-767-2366.

INTERROGATORY NO. 13: Do you disagree or take issue with Blackstone's response to request for production no. 8, which response was served on June 2, 2015? If your response is in the affirmative, please state the basis for the disagreement or issue.

ANSWER: Yes. Claimant's response to request for production no. 8 is confusing and remains confusing after the depositions of Claimant's witnesses on August 12, 2015. Also, the bulk of Claimant's response relies upon perceived damages suffered by subcontractors and not by Claimant. Claimant cannot pursue damages for nonparties to this lawsuit.

REQUEST FOR PRODUCTION NO. 11: Please produce any documents that relate in any way to your response to the preceding interrogatory.

RESPONSE: No documents other than those provided herein are known at this time. If any documents are determined in addition to those provided herein, they will be made available.

INTERROGATORY NO. 14: Will you supplement your answers to these interrogatories and requests for production of documents upon your receipt of any information which would alter, amend, or supplement your previous answers?

ANSWER: Respondent will abide by the Arkansas Rules of Civil Procedure and the Claims Commission Rules and Regulations.

Respectfully submitted,
ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

By: David Dawson
David Dawson
Arkansas Bar No. 93087
Staff Attorney
AHTD, Legal Division
P. O. Box 2261
Little Rock, AR 72203-2261
(501) 569-2277
(501) 569-2164 fax

CERTIFICATE OF SERVICE

I, David Dawson, certify that I have served the foregoing upon the Claimant by delivering a true copy of same this 24 day of Aug., 2015, to Counsel for Claimant:

Patrick D. Wilson and
Erika Gee
Attorneys at Law
Wright, Lindsey & Jennings, LLP
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201

David Dawson
David Dawson



WRIGHT LINDSEY JENNINGS

200 West Capitol Avenue, Suite 2300 Little Rock, AR 72201-3699 Main 501.371.0808 Fax 501.376.9442 wlj.com

Patrick D. Wilson
ATTORNEY

Direct: 501.212.1343 | pwilson@wlj.com

Arkansas

State Claims Commission

NOV 25 2015

November 25, 2015

RECEIVED

Ms. Brenda Wade, Director
Arkansas State Claims Commission
101 E. Capitol Ave., Suite 410
Little Rock AR 72201

Via Hand Delivery

RE: Pre-Hearing Information:
Blackstone Construction LLC v. AR Highway Dept
Claim # 15-0597-CC

Dear Ms. Wade:

Thank you for the opportunity to present the Commissioners with pre-hearing material before the December 10, 2015 hearing on the referenced case.

As you requested in your letter of August 25, 2015, I am writing to inform the Commissioners that my client Blackstone Construction, LLC ("Blackstone") anticipates the following witnesses will testify at the hearing: Blackstone employees or consultants Morgan Barrett and Paul Mlakar, and Jim Bowden of Blackstone's main subcontractor, Bowden Specialties. Blackstone may also call to testify the key AHTD employees on this job, Gary Buzbee and Joe Knight, who we understand will be present for the hearing.

I have not enclosed copies of the depositions that Blackstone has taken from AHTD employees Gary Buzbee and Joe Knight because I see that David Dawson of AHTD has included those depositions, and all that have been taken in this case for that matter, in the binder that he filed with you today.

For the convenience of the Commissioners, and instead of a formal pre-hearing brief, I'll summarize the issues presented by the case. It has become clear in discovery that there are no significant facts in dispute. Briefly, Blackstone is a company based in Russellville who was the general contractor for a \$17 million construction contract for a highway near Russellville ("the Project"). Among other components, the Project required compacted embankment (filling in, or "lifting" the level of the surface) and unclassified excavation (removing material from the surface). Blackstone engaged subcontractors specializing in "dirt work" to perform

November 25, 2015

Page 2

these two components of the job. Bowden Specialties ("Bowden") was the primary dirt work subcontractor.

As has been acknowledged by Mr. Buzbee and Mr. Knight, who were the AHTD engineers involved in the construction project, the plans prepared by AHTD for contractors to use in putting together their bids on the job had a "significant discrepancy" in the quantities of material necessary for the classified excavation and compacted embankment portions of the Project. In fact, the discrepancy was so significant that neither one of the AHTD engineers could recall another instance like this. This effect of this error in the plans—which again were prepared by AHTD for use in bidding—is the central issue in this case.

In order to understand why this error was so significant to Blackstone, we must briefly discuss how bids for this type of work are prepared in this industry. Rather than paying by the hours worked, or the number of men or equipment needed to complete a dirt work portion of a project, these contracts are bid to pay for dirt work by the cubic yard of materials that are used in the project. So, if a contractor estimates he will need 15 dump trucks, 3 rollers and 25 men over 45 days to complete the dirt work, all of those costs must be represented in the bid price per cubic yard of material. If a bid is prepared that spreads all of the equipment, labor and overhead costs involved into the unit pricing for 100 cubic yards of material, but the plans were wrong and the project actually only needs 10 cubic yards of material, the contractor is then unable to recover all of the costs built into the other 90 cubic yards of material. He will end up losing a great deal of money on the project unless the contract's unit prices are adjusted to the true costs.

That is precisely what happened here. The quantities for compacted embankment in the plans indicated that there were large amounts of "fill" to be done in portions of the job. This led Blackstone to submit a bid that spread its costs over 260,372 cubic yards, but the actual quantity needed was significantly less than what was shown in the plans, making Blackstone unable to recover the costs for the unnecessary material. Similarly, the plans called for substantially more material of unclassified excavation than was actually needed. The figures include the unplanned undercut, which has the effect of making AHTD's error appear smaller.

Mr. Bowden will testify that the plans indicated it was a "large fill" job, rather than a "small fill" job. That, again, was wrong. That mistake by AHTD had a dramatic impact on the per-unit pricing. The per-unit bid price is higher for a small fill job than a large fill job, because it requires more time to complete many small fills over a larger area than it does to complete large fills in a few places.

November 25, 2015

Page 3

These errors in AHTD's plans misled Blackstone into submitting a bid that was far too low for the work that was actually required on the Project. After AHTD refused to adjust any of the unit prices, Blackstone was forced to file this claim to recover the amount that *it would have bid* on the Project if the plans had correctly shown the quantities and type of work that would be needed.

AHTD acknowledges there was an error, but has refused to allow Blackstone to obtain an adjustment on the contract because AHTD says Blackstone did not notify AHTD of the issue during the Project. However, this was impossible, since AHTD has also admitted that no one—including them—realized the magnitude of the plan errors until 2014, which was two (2) years after the job was complete. It was only when it calculated the final quantities that AHTD realized that the plan quantities were significantly different than the reality, and demanded \$244,043.49 back from Blackstone.

Under protest, Blackstone sent the \$244,043.49 back to AHTD. Blackstone also paid its subcontractor, Bowden, the full contract amount. It has brought this claim because it is fundamentally unfair for AHTD to demand payment for major changes in quantities caused by errors in their own plans and then deny the contractor the right to seek adjustments caused by AHTD's errors. Allowing AHTD's decision to stand will force the contractors to assume all of the risks that AHTD's plans are correct, when they have no ability to check the plans and potentially redo all of the contract specifications and prepare a bid in the thirty (30) days they are given. Blackstone seeks only to adjust the unit prices for the Project so that it can be paid for the work it performed, and prevent AHTD from getting a windfall resulting from its own errors.

As always, thank you for your assistance.

Cordially,

WRIGHT, LINDSEY & JENNINGS LLP



Patrick D. Wilson

ERG/ch

cc: David Dawson, AHTD

JAN 13 2016

RECEIVED
CLAIMANT

ARKANSAS STATE CLAIMS COMMISSION

BLACKSTONE CONSTRUCTION, LLC

VS.

CLAIM NO. 15-0597-CC

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

RESPONDENT

**CLAIMANT'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

FINDINGS OF FACT

1. The complaint in this matter was timely and properly filed by Claimant Blackstone Construction, LLC ("Blackstone") against Arkansas State Highway and Transportation Department ("AHTD"). Blackstone exhausted all of its administrative remedies, and this Commission has jurisdiction.

2. Blackstone is a Russellville company who acted as the general contractor for a \$17 million construction contract for a highway near Russellville ("the Project").

3. Among other components, the Project required compacted embankment and unclassified excavation. Blackstone engaged subcontractors specializing in "dirt work" to perform these two components of the Project. Bowden Specialties was the primary dirt work subcontractor.

4. In this industry, contracts are bid to pay for dirt work by the cubic yard of materials that are used in the project; all necessary equipment, labor, and other overhead must be accounted for in the bid price per cubic yard of material, based on the quantities given in the plans.

5. The plans and bid documents prepared by AHTD for contractors to use in putting together their bids on the Project contained mathematical errors for the portion on Robinson Lane. Specifically, the calculations on the quantities of material necessary for the classified excavation and compacted embankment portions on Robinson Lane were wrong, resulting in plans and bid documents that called for significantly higher quantities than were actually necessary.

6. Blackstone's bid for compacted embankment spread its costs over the plan quantity of 260,372 cubic yards, with a unit price of \$6.00 per cubic yard. Blackstone's bid for unclassified excavation spread its costs over the plan quantity of 130,569 cubic yards, with a unit price of \$5.00 per cubic yard, for a total of \$2,215,077.00 in those two categories.

7. Blackstone has proven with reasonable certainty that, if AHTD had not made errors in the plans and bid documents, its bid would have had unit price quantities of \$8.75 per cubic yard for compacted embankment and \$5.50 per cubic yard for unclassified excavation, for a total of \$2,764,381.25.

8. Because the errors in the plans and bid documents were mathematical, Blackstone had no reason to know that the quantities were wrong during either the bid or construction phases of the Project.

9. AHTD had supervising engineers on site during the Project who were familiar with all phases of construction, including the portions on Robinson Lane.

10. AHTD discovered that there were errors in its plans and bid documents when it finished its final estimate for the Project in 2014, two years after

the job was complete. AHTD then demanded \$244,043.49 from Blackstone for the reduction in the quantities, calculated at the unit price in Blackstone's bid. Blackstone repaid that amount, but did so under protest.

11. After deducting its demand for \$244,043.49, AHTD has paid Blackstone a total of \$2,028,587.00 for unclassified excavation and compacted embankment.

12. Blackstone's total bid for the Project was approximately \$3 million less than the next closest bidder.

CONCLUSIONS OF LAW

13. It is customary and usual in this industry to include all necessary equipment, labor, and other overhead in the bid price per cubic yard of material, based on the quantities given in the plans or bid documents.

14. The errors in the plans and bid documents on this Project are a material breach of AHTD's duty to provide "full, complete, and accurate plans," under the 2003 Arkansas State Highway Standard Specifications, § 102.06 *Examination of Plans, Specifications, Special Provisions and the Site of the Work*.

15. Blackstone conducted the due diligence required by the Highway Standard Specifications and what is customary and expected within the industry prior to submitting its bid.

16. Blackstone was entitled to rely upon the plans provided by AHTD as full, complete, and accurate.

17. Blackstone's damages are properly calculated as the difference between what it was paid (\$2,028,587.00) and what it would have been paid if AHTD had not breached its duty to prepare accurate plans and bid documents (\$2,764,381.25).

18. Blackstone is therefore entitled to an award of \$735,794.25.

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By: Patrick D. Wilson
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Erika Gee (2001196)

*Attorneys for Claimant
Blackstone Construction, LLC*

CERTIFICATE OF SERVICE

On January 12, 2016, a paper and electronic copy of the foregoing was served by U.S. mail on:

David Dawson, Staff Attorney
AHTD, Legal Division
PO Box 2261
Little Rock, AR 72203-2261

Patrick D. Wilson
Patrick D. Wilson

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 244,043.49 Claim No. 15-0597-CC

Blackstone Construction, LLC. Attorneys
Patrick Wilson & Erika Gee, Attorney

Claimant Claimant

vs.
AR Highway & Transportation Dept. David Dawson, Attorney

Respondent Respondent

State of Arkansas Refund of Expenses & Breach of Contract

March 2, 2015

Date Filed Type of Claim

FINDING OF FACTS

The original claim was filed for refund of expenses and breach of contract in the amount of \$244,043.49, later adjusted to \$735,794.25, against Arkansas Highway & Transportation Department. Present at Hearing on January 14, 2016 was the Claimant, represented by Attorneys Patrick Wilson and Erika Gee, and the Respondent, represented by David Dawson, Staff Attorney. The Claims Commission hereby unanimously finds for the Claimant, Blackstone Construction, LLC. in the amount of \$375,000.00.

1. The complaint in this matter was timely and properly filed by Claimant Blackstone Construction, LLC ("Blackstone") against Arkansas State Highway and Transportation Department ("AHTD"). Blackstone exhausted all of its administrative remedies, and this Commission has jurisdiction.
2. Blackstone is a Russellville company which acted as the general contractor for a \$17 million construction contract for a highway near Russellville ("the Project").
3. Among other components, the Project required compacted embankment and unclassified excavation. Blackstone engaged subcontractors specializing in "dirt work" to perform these two components of the Project. Bowden Specialties was the primary dirt work subcontractor.

(See Back of Opinion Form)

CONCLUSION

Upon considerable consideration of all the facts, as stated above, the Claims Commission hereby unanimously allows this claim in the amount of \$375,000.00 and will include the claim in a claims bill to be submitted to the appropriate session of the General Assembly, for subsequent approval and payment.

Date of Hearing January 14, 2016

Date of Disposition January 14, 2016

Attorney
Mica Strother Chairman
Commissioner
Bill Lantieri Commissioner

4. In this industry, contracts are bid to pay for dirt work by the cubic yard of materials that are used in the project; all necessary equipment, labor, and other overhead must be accounted for in the bid price per cubic yard of material, based on the quantities given in the plans.

5. The plans and bid documents prepared by AHTD for contractors to use in putting together their bids on the Project contained mathematical errors for the portion on Robinson Lane. Specifically, the calculations on the quantities of material necessary for the classified excavation and compacted embankment portions on Robinson Lane were wrong, resulting in plans and bid documents that called for significantly higher quantities than were actually necessary.

6. Blackstone's bid for compacted embankment spread its costs over the plan quantity of 260,372 cubic yards, with a unit price of \$6.00 per cubic yard. Blackstone's bid for unclassified excavation spread its costs over the plan quantity of 130,569 cubic yards, with a unit price of \$5.00 per cubic yard, for a total of \$2,215,077.00 in those two categories.

7. Because the errors in the plans and bid documents were mathematical, Blackstone had no reason to know that the quantities were wrong during either the bid or construction phases of the Project.

8. AHTD had supervising engineers on site during the Project who were familiar with all phases of construction, including the portions on Robinson Lane.

9. AHTD discovered that there were errors in its plans and bid documents when it finished its final estimate for the Project in 2014, two years after the job was complete. AHTD then demanded \$244,043.49 from Blackstone for the reduction in the quantities, calculated at the unit price in Blackstone's bid. Blackstone repaid that amount, but did so under protest.

10. After deducting its demand for \$244,043.49, AHTD has paid Blackstone a total of \$2,028,587.00 for unclassified excavation and compacted embankment.

11. Blackstone's total bid for the Project was approximately \$3 million less than the next closest bidder.

CONCLUSIONS OF LAW

12. It is customary and usual in this industry to include all necessary equipment, labor, and other overhead in the bid price per cubic yard of material, based on the quantities given in the plans or bid documents.

13. The errors in the plans and bid documents on this Project are a material breach of AHTD's duty to provide "full, complete, and accurate plans," under the 2003 Arkansas State Highway Standard Specifications, § 102.06 *Examination of Plans, Specifications, Special Provisions and the Site of the Work*.

14. A highway department official testified that the typical margin of error in specifications which a bidder should assume was 2%, but that the specifications in this case had a much larger margin of error.

15. Blackstone conducted the due diligence required by the Highway Standard Specifications and what is customary and expected within the industry prior to submitting its bid.

16. Blackstone was entitled to rely upon the plans provided by AHTD as full, complete, and accurate.

17. Blackstone's damages are properly calculated as the difference between what it was paid and what it would have been paid if AHTD had not breached its duty to prepare accurate plans and bid documents.

18. Blackstone is therefore entitled to an award of \$375,000.00

IT IS SO ORDERED.

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ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

Scott Bennett
Director
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February 17, 2016

Ms. Brenda Wade, Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201-3823


Arkansas Claims Commission
FEB 18 2016
RECEIVED

Re: *Blackstone Construction v. AHTD*
Claim No. 15-0597-CC

Dear Ms. Wade:

Pursuant to Ark. Code Ann. §19-10-211, the Respondent, Arkansas State Highway and Transportation Department, files this Notice of Appeal in the above referenced claim, appealing the award of \$375,000 to the Claimant. Please forward the relevant information to the Claims Review Subcommittee for appeal of the Commission's award in this claim. Thank you.

Sincerely,


David Dawson
Staff Attorney

/DD

cc: Patrick D. Wilson, Attorney for Claimant
Erica Gee – Attorney for Claimant

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