

COMMONWEALTH OF PENNSYLVANIA

HOUSE OF REPRESENTATIVES

Transportation Committee Hearing

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 Pre-Qualification Requirements for :
 Highway Contractors Doing Business with :
 the Commonwealth :
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Room 60, East Wing
Main Capitol Building
Harrisburg, Pennsylvania

Thursday, October 19, 1995

Met, pursuant to notice, at 9:10 a.m.

BEFORE:

- REPRESENTATIVE DICK HESS, Subcommittee Chairman
- REPRESENTATIVE RUSS FAIRCHILD, Member
- REPRESENTATIVE DENNIS LEH, Member
- REPRESENTATIVE DANTE SANTONI, Member
- REPRESENTATIVE JOSEPH PETRARCA, Member
- REPRESENTATIVE JOSEPH MARKOSEK, Member
- REPRESENTATIVE TOM DRUCE, Member
- REPRESENTATIVE ELLEN BARD, Member
- REPRESENTATIVE PETE ZUG, Member
- REPRESENTATIVE JERE STRITTMATTER, Member

ALSO PRESENT:

- ERIC C. BUGAILE, Republican Staff
- PAUL E. PARSELLS, Democratic Staff

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FORM 2

P R O C E E D I N G S

1
2 CHAIRMAN HESS: Good morning. Please excuse my
3 voice. I am suffering with a little bit of laryngitis, a
4 cold and the flu and everything else, so bear with me.

5 My name is Representative Dick Hess, and I am
6 Subcommittee Chairman, Highway Safety, for the House
7 Transportation Committee. I am sitting in for Chairman
8 Rick Geist, who is out of town today.

9 The topic of our hearing today is pre-
10 qualification requirements for highway contractors doing
11 business with the Commonwealth. We have quite a number
12 of people here who are going to be testifying today, so I
13 think we're going to get started.

14 Before we do that, I would like to start from
15 my left here and have each member of the Committee
16 introduce himself and let you know what part of the state
17 he is from.

18 REPRESENTATIVE MARKOSEK: Good morning;
19 Representative Joe Markosek, Allegheny and Westmoreland
20 Counties.

21 REPRESENTATIVE FAIRCHILD: Good morning;
22 Representative Russ Fairchild, Union and Snyder Counties.

23 REPRESENTATIVE ZUG: Representative Peter Zug,
24 Lebanon and Dauphin Counties.

25 REPRESENTATIVE STRITTMATTER: Jere

1 Strittmatter, Lancaster County.

2 CHAIRMAN HESS: Thank you, gentlemen. Before
3 we start our testimony, there are a few members who would
4 like to make some opening statements before we call those
5 to testify.

6 The first person to testify this morning is
7 Representative Bob Flick from the 167th District.

8 Representative Flick.

9 REPRESENTATIVE FLICK: Thank you, Mr. Chairman.
10 I had prepared remarks, which I was going to share with
11 you, but I'm going to leave them for the Committee. I'll
12 leave them with the Chairman later.

13 I think what I'd like to do is read into the
14 record just a couple of the opening paragraphs of letters
15 which I've received regarding construction work which was
16 done at a major intersection in my legislative district.
17 The intersection is Route 30, known as Lancaster Pike,
18 and Route 320, which is Spring Mill Road. They are in
19 Radnor Township, Delaware County, in the southeastern
20 part of the Commonwealth. It was to have been a
21 relatively minor and short-standing construction project
22 that was there. It turned out to be years and caused
23 great havoc amongst the merchants.

24 Let me just read from the owner of the Coastal
25 Service Station. I'm going to submit all of these

1 letters to the Chair for public information. This is a
2 letter written by Pete and Judy Damian, who operate the
3 Coastal Service Station at that intersection.

4 "To Whom it May Concern: As a business owner
5 in Villanova, I feel obligated to write this letter. My
6 business is a gasoline station/mini market located on
7 Route 320 and Route 30. On or about September of 1994,
8 road construction began on Routes 30 and 320. From
9 September of '94 to October of '95, it was a living hell
10 as far as business was concerned. Primo Construction
11 Company was the assigned contractor (What a mistake that
12 was).

13 "The owner of Primo was not the least bit
14 concerned about the business community. I have been on
15 this corner of property since I was a child (family
16 business), and I have seen construction all over the
17 area. Never have I seen a more unorganized,
18 unprofessional, rude and deceitful contractor."

19 That's just the opening paragraph.

20 Flowers on the Avenue is another merchant
21 located at that intersection, Mary Beth Collins. Her
22 letter opens: "To Whom it May Concern: This is a letter
23 to voice my concern over the continuation of awarding
24 contracts to Primo Contractor. After observing firsthand
25 for over a year the work of Mr. Colona and his helpers, I

1 feel safe in saying my staff could have done the job
2 faster, better and more efficiently.

3 "We certainly got what we paid for. Mr.
4 Colona's company may have been low bid. However, because
5 of the ill-kept equipment, work stoppages and incorrect
6 work done by the contractor, it certainly ended up
7 costing all of us, merchants, taxpayers and motorists, a
8 whole lot more." And I'll submit the rest of the letter
9 and attachments for the record.

10 J. Mark Keenan is the proprietor of the
11 Villanova Hardware, again at that intersection. "I hope
12 that this will be the last letter I write about the four-
13 year saga of the Villanova Route 30 storm sewer project.
14 In this span of time, I, along with many of the other
15 business owners, have learned firsthand the difficulties
16 in dealing with bureaucracy within the Pennsylvania
17 Department of Transportation. We have had the
18 bittersweet opportunity of dealing with some PennDOT
19 representatives who had no compassion for our plight and
20 others who have gone out of their way to accommodate us
21 to the best of their abilities. I am writing this letter
22 as a sort of unofficial spokesman for the business owners
23 of Villanova affected by this construction." And I'll
24 submit this letter, also.

25 Then I have another letter written by a

FORM 2

1 property owner, landlord of those tenants.

2 Now, there are at least three or four merchants
3 which were unable to prepare letters that I might submit
4 to you on this occasion, because they're out of business,
5 and it's a shame. I spoke with them. We worked with
6 PennDOT. We did as much as we could to try to help them,
7 but they just couldn't stand the fact that the customers
8 could not get in and out of their shops and they couldn't
9 have the cash flow in order to stay in business. So they
10 relocated and in some cases actually went out of
11 business, giving up their livelihood and calling it
12 quits.

13 So I would submit to this distinguished
14 Committee that there are some problems with the way
15 PennDOT awards contracts. We shouldn't be doing it just
16 to the lowest bidder. As one of the merchants said,
17 that's exactly what you get when you award the contract
18 to the lowest bidder; you get quite possibly the worst
19 work being done.

20 Now, I'm not going to paint broad brush all
21 contractors throughout this Commonwealth, because there
22 are many contractors who do submit qualified low bids and
23 do perform the work on time, on budget, and in a very
24 efficient manner with the littlest disruptions to the
25 community, but there are some contractors who continue to

1 receive awards from PennDOT when the elected officials
2 know and PennDOT knows that we have had nothing but a bad
3 track record with these contractors, and there ought to
4 be a way for PennDOT to have more flexibility in awarding
5 contracts. It shouldn't just be the lowest bid. The
6 quote, "from a responsible bidder," I'm not sure that the
7 definition of "responsible" is what we believe it should
8 be.

9 So I would hope that this Committee will look
10 into those concerns. I appreciate Representative Druce
11 for spearheading this investigation and arranging this
12 hearing. He, I believe, will share with you some woes
13 and heartbreak stories which have occurred in his
14 legislative district.

15 I will conclude by just thanking you for your
16 time. I will leave my letters with you, and I will
17 submit prepared remarks to the stenographer. Thank you
18 very much, Mr. Chairman.

19 CHAIRMAN HESS: Thank you, Representative
20 Flick.

21 Three other members have arrived since we had
22 the roll call; Representative Leh from Berks County, and
23 Representative Bard from Montgomery County, and
24 Representative Petrarca from Allegheny County -- Western
25 Pennsylvania. Thank you.

1 As we continue, Representative Druce, you have
2 an opening statement, also.

3 REPRESENTATIVE DRUCE: Thank you, Mr. Chairman,
4 and thank you for chairing this Committee hearing,
5 particularly in light of the fact that you had to travel
6 home last night and come back here again today under the
7 weather. I appreciate your effort to do that and
8 appreciate the support of the Committee to hold the
9 hearing and the support of Chairman Geist to also support
10 this hearing.

11 I don't want to go into the details of
12 particulars on a project in my district in which Primo is
13 the prime contractor. You will hear from people in my
14 legislative district, who I think will articulate far
15 better than I the impact on them both personally and
16 professionally relating to their businesses of how this
17 has impacted them.

18 This is the second experience I've had with
19 this particular contractor in my legislative district.
20 The other one involved an intersection improvement in
21 which it was a 360-day contract, where the contractor did
22 not show up until after the 200th day of the contract,
23 proceeded to walk off the job midway through the project
24 claiming he was not being paid. Frankly, it was a slow
25 period for PennDOT, although I don't believe any other

1 contractors in the Commonwealth left their job site, but
2 this contractor did and proceeded to double his work crew
3 at a construction site in Coatesville, Chester County,
4 where he was behind on a bridge project in that
5 particular area.

6 I highlight these things, but I say that and
7 really want to move beyond that. I think if this
8 Committee is going to be successful and we're going to be
9 successful as a Transportation Committee, these examples
10 I hope put a human face and a human element on the
11 consequences when we have contractors that don't finish
12 their work on time.

13 But if we're going to make corrections and
14 responsible recommendations to the Department, we need to
15 look beyond that and look at the whole process of how
16 PennDOT awards bid, as Representative Flick indicated,
17 and I think we also need to look at the pre-qualification
18 process, which allows these contractors to bid in the
19 very first place; and to me, that is the place that this
20 Committee ought to focus so that we make sure, not that
21 we put contractors out of business, which is not my
22 intention, but to make sure that the contractors who bid
23 on the work have the capacity to complete the job, and
24 that they are not overextended. And I would submit to
25 this Committee today that the contractor doing the work

1 on Route 313 in Dublin, Primo Contracting, is a prime
2 example of an overextended contractor, who has more work
3 from the Department than he can physically handle, and
4 his track record, which I would submit to the Committee,
5 if they so desire, in Engineering District 6 in the
6 southeastern part of the state, indicates that. There
7 are repeated latenesses on a number of jobs.

8 I would hope that our work would lead us to the
9 conclusion that I have articulated to the Department in
10 private meetings as I've worked with them.

11 When we talk about who the contractor is, I
12 guess that's a technical term, and the highway people
13 know who that is and the contractor responsible. From
14 where you and I sit, really, the contractor is PennDOT.
15 They are the accountable party for what happens on a
16 state highway project; and believe me, and you all know
17 from your experiences, that it's the Department that gets
18 the criticism when it's late. It so happens here, the
19 contractor is drug into this one, but it normally isn't
20 the case. And as I worked with the Department to try to
21 assist them in moving this project forward, I found there
22 were too many areas where they didn't have the muscle and
23 the wherewithal to make this contractor or any contractor
24 responsible to them.

25 So what I ask this Committee to do in its

1 thinking, as we listen to the testimony today, is what
2 can we do to empower PennDOT so that it is fully
3 accountable on these highway projects, and when things go
4 wrong or contracts run late and people's lives are
5 disrupted and their family businesses are lost, that the
6 Department acting on behalf of the people of Pennsylvania
7 can move in swiftly and expeditiously to correct the
8 problem and respond when we call.

9 Unfortunately, I think you will find that the
10 Department doesn't have all the tools to do that; and if
11 we're going to make changes, that's where they need to be
12 made; and if they have those things at their disposal,
13 then I believe when bids are awarded -- and I think that
14 there is probably merit, though, to the fact that we have
15 a low bid process here, and I'm sure the industry will
16 comment on that -- but at least then the Department can
17 respond if things go wrong later.

18 So I hope at the end this Committee will make
19 recommendations and, if need be, legislative changes to
20 empower the Department to do what I think the people of
21 Pennsylvania want them to do, and that is, when they
22 award these contracts, get them done on time so that
23 people's lives are not disrupted and family businesses
24 aren't destroyed because of delays in work.

25 Thank you, Mr. Chairman, and thank you to

1 members of the Committee.

2 CHAIRMAN HESS: Thank you, Representative
3 Druce.

4 Continuing on, our next testifier will be Betty
5 Graver, Executive Director of Pennridge Chamber of
6 Commerce.

7 Would the whole group like to sit up here at
8 one time, or do you want to come up individually, or how
9 would you like to do it?

10 MS. GRAVER: We'll come up together.

11 CHAIRMAN HESS: You can sit there in that front
12 row.

13 Ms. Graver, maybe you want to introduce the
14 group that is with you; and if each one of you want to
15 testify or say a few words, introduce yourself for the
16 record when you start to testify, if you would, please.

17 MS. GRAVER: My name is Betty Graver. I'm the
18 Executive Director of the Pennridge Chamber of Commerce.
19 The Dublin project falls in my area. I'll tell you who
20 the rest of our group is that we have with us.

21 This is Bill Davidson. He has the Dublin
22 Bakery. Jean McDevitt, who is another business in the
23 corridor there, they have a gift shop. This is Tom
24 Supplee. Tom Supplee is with the Borough of Dublin. In
25 back of me is Jack Knisley. He has the Dairy Queen.

1 Beside me is Celeste Gross; and Celeste Gross has a gift
2 shop in the community. And Frank Rymdeika has Grates &
3 Grills. That is another business in our community.

4 I can't impart on you people any stronger the
5 effect that the workmanship that is being done there and
6 the delays that we've had has had on our entire Pennridge
7 Community. All of you come from areas where, the
8 gentleman from York, I know your Executive Directors out
9 there, the gentleman from Westmoreland. I just spent
10 last week with those people, and I shared some of our
11 horror stories; and believe me, it is a horror story when
12 something like this comes into your community. It just
13 totally is devastating.

14 These people have lost business that is not
15 going to come back. Some of it is not going to come
16 back. I don't care if you open the road tomorrow. If it
17 was more convenient for me to stop closer to work with my
18 dry cleaning, I'm not going to go back to that dry
19 cleaner; not even having one lane open that we could
20 feasibly get through; threats of having high fines to
21 these people. Dublin has been affected, but you have
22 affected an entire community, because there are people
23 that try to go through there to get to businesses in the
24 rest of our area. It's a main thoroughfare. It's not a
25 back side road. It was not an easy detour area. These

1 people can't travel from the lower part of Bucks County
2 to the upper part of Bucks County and come to our
3 businesses, and it has been heavily affected by that.

4 I've had telephone calls from people on, "How
5 do we do this? How do I get there?" Well, there's not
6 an easy way to get there from where you are, because you
7 don't have a city that has a little block that you can
8 just go right around; and if you followed the PennDOT
9 detours, you were taken miles and miles out of your way.
10 You hear of everybody being lost on the Internet
11 somewhere. There were people lost in the Pennridge
12 community because they didn't know where to go.

13 The infrastructure in the surrounding community
14 was not there to handle this. There were all kinds of
15 threats to people, and it scared people away. They
16 didn't want to go to the community for fear of \$90.00
17 fines just for driving past that detour sign.

18 I think we've got to make someone accountable
19 for this, and there's got to be a way to do construction
20 that we can keep the community open; we can keep the
21 businesses that you can get in and out. I just besiege
22 you people to look at the contracts that are being let
23 and how they're written and look at this. There's got to
24 be a way that you can give us some kind of help.

25 I'll lend now to some of the others to share

1 their story with you.

2 CHAIRMAN HESS: Thank you very much.

3 Do any members of the Committee have any
4 questions?

5 Representative?

6 REPRESENTATIVE MARKOSEK: Maybe just kind of a
7 general thing. The previous speakers, Representative
8 Flick, in particular, mentioned some letters about rude
9 construction people and poorly managed. Was that your
10 problem, too, or was it just that there was construction,
11 or was it also compounded by --

12 MS. GRAVER: I think these people can share
13 that with you, what they have to say.

14 REPRESENTATIVE MARKOSEK: I assume you all have
15 like some war stories on those kind of things.

16 MR. SUPPLEE: My name is Tom Supplee. I am the
17 Borough Manager and the Police Chief in Dublin Borough.
18 Just to give you a little insight and impact just on the
19 police side, we have allocated expenditures probably
20 about 25 percent over what our part-time police officers'
21 budgeting is just to deal with the detour traffic and the
22 motorists and the residents and merchants.

23 Expenditure-wise, just not only impacting on
24 Dublin Borough, monies that we expended on side roads
25 that have been destroyed by detouring traffic,

1 neighboring Hilltown Township and Bedminster Township
2 have probably expended as much monies as we have on their
3 roads. In addition, once it is completed, they're
4 looking at some of the roads that they have, they have to
5 totally reconstruct because of the deterioration of the
6 detour traffic, and they're looking in the vicinity of
7 \$25,000 at least for each road. That was as a result of
8 the detour situation of the construction being an 11-mile
9 detour route to get around this construction area within
10 Dublin Borough, which Dublin Borough is only three-
11 quarters of a square mile in distance.

12 The main point I think that I can see from day
13 one when this project was being presented to us and
14 before it was implemented was that something went wrong
15 that I can see in the contract-wise when they're
16 allocating over 300 days to complete this project. I
17 don't think anybody would dispute the fact that 75
18 percent of the time the construction people that have
19 been out on that project from Primo have been
20 approximately about six construction people actually from
21 Primo working on that job with a handful of equipment,
22 which tells me that -- and even inquiring of Primo as to
23 how many employees they really do have, how much
24 equipment do they have, well, apparently, they have quite
25 considerable equipment, but it is dedicated elsewhere.

1 For that project to be allocated 300-and-some days and it
2 can be accomplished by six people with five pieces of
3 equipment, I think something went wrong to operate that
4 way. It's great for the contractor. He can utilize his
5 equipment and people elsewhere and do other contracts,
6 but that tells me that that project probably could have
7 been done in half the time had the resources been
8 dedicated to that construction project.

9 That was in the planning stage and engineering-
10 wise and contractually-wise, that's the way the contract
11 was written, and whether he does it with one person or
12 does it with 100 people, as long as he accomplishes what
13 he is supposed to do in the time period.

14 CHAIRMAN HESS: Does that answer your question,
15 Joe?

16 REPRESENTATIVE MARKOSEK: Yes.

17 CHAIRMAN HESS: Representative Fairchild?

18 REPRESENTATIVE FAIRCHILD: Thank you. Betty,
19 with the Chamber involvement, does the Chamber have a
20 Transportation Committee like some Chambers do?

21 MS. GRAVER: At this point right now, we do
22 not. We were not involved in the very beginning of it.
23 Not all of the Dublin merchants were members of the
24 Chamber, but when I felt the problems that they were
25 having and I went down into the area, into the community,

1 I came back and I contacted Tom and some of the other
2 legislators out here and said, "What can we do? We need
3 to do something."

4 REPRESENTATIVE FAIRCHILD: Usually, it has been
5 my experience in my district, that usually on projects
6 like this, PennDOT holds public hearings prior to the
7 awarding of the project or prior to even sometimes final
8 design. When did the problem become apparent; during
9 that process or did they not hold hearings?

10 MR. SUPPLEE: What occurs was -- and I've been
11 in attendance at all the meetings and hearings that
12 they've had -- the representative from PennDOT, at the
13 time he was holding the hearings with the residents and
14 the merchants, told the borough and the merchants and
15 residents that at all times that roadway would be open,
16 that there would be a lane of traffic open during
17 construction. It was just a formality that they had to
18 put a detour for 11 miles around on state roadways to get
19 them around that detour, but that in fact the roadway
20 would always be open. At the most, there may be 10 or
21 15-minute delays for traffic while construction equipment
22 was moving around.

23 After the project got bid out and the
24 contractor took it over, we were advised then at that
25 point that in fact the road was closed. This was after

1 the contract was awarded. And the only requirement that
2 the contractor had was ingress or egress from one end of
3 the construction or the other, no through traffic, and
4 only for residents or business merchants, they can get in
5 and out, but absolutely, the road was not open for any
6 through traffic.

7 Then as it progressed, then the road was closed
8 completely to through traffic and done in sections, and
9 the road was completely closed down where there was no
10 through traffic at all.

11 I guess the people within the community in
12 Dublin and the merchants, what we were told during the
13 planning process by PennDOT representatives and what in
14 fact occurred with this contract that went out to the
15 contractor were two complete different things, and the
16 people that we were involved with with PennDOT initially
17 were no longer on the project once it got awarded out.

18 REPRESENTATIVE FAIRCHILD: What reasons did
19 they give the community that these changes took place?

20 MR. SUPPLEE: One of the things was that the
21 construction would be finished quicker, sooner, if they
22 closed the road down so that the equipment could move
23 around in there better and not be impeded by any through
24 traffic. That just did not happen. It still progressed
25 at the same pace.

1 The bottom line is you could look at the
2 contractor, and he knows that he has a certain time
3 period that he is supposed to meet, and he's not
4 increasing his work flow in there or construction-wise.
5 All he's doing is being given the leisure of not having
6 to deal with any kind of through traffic, even to the
7 point that we were told that the provisions under the
8 contract were that he was not in fact required to put any
9 flag people out for traffic going through, because it was
10 in fact closed. There was not supposed to be any through
11 traffic. Then I had to use police resources to try and
12 deal with the traffic that was attempting to go through
13 there.

14 The alternative plan was they came back later
15 and said, "Okay. Well, we can speed this up if we just
16 close it down completely." They were trying to
17 accommodate us by allowing some traffic through there,
18 and that wasn't working. So then we were advised they'd
19 close down the sections of road and that would speed up
20 the process, which it hasn't.

21 REPRESENTATIVE FAIRCHILD: Thank you.

22 CHAIRMAN HESS: I think in the essence of time,
23 we'll let each one of your group testify that wants to
24 testify, and then we'll go to questions of the panel.

25 MR. DAVIDSON: My name is Bill Davidson. I

1 opened a bakery in town just before the construction
2 started. It has been a horror story. The letters that
3 were read mirrored everybody's sentiments exactly. You
4 just couldn't believe. From a business point of view, it
5 was worse than a natural disaster because it was slow,
6 slow and painful.

7 All my notes, basically, the letters said it
8 all. Primo, we've tried to deal with them. We formed a
9 business community group, which I'm president of, to try
10 to deal with this. Dealing with PennDOT was very tough.
11 We'd call and we'd get answering machines. We've been
12 trying to be social about it. It just doesn't work.

13 A couple of businesses have gone out already,
14 and the rest of us are barely hanging on, because the
15 road was supposed to be done sometime in September. It
16 was supposed to be totally finished. We were going to
17 have a grand reopening and really go nuts for Christmas.
18 We need a good retail season for Christmas to really hang
19 in there, and with the roadwork being pushed back now
20 till Thanksgiving, it shortens the period so much that
21 it's going to make it really tough.

22 A lot of people borrowed money. Banks were not
23 happy about lending money to any of us, because,
24 obviously, we're not doing that well. We would like, if
25 it would be possible in the future, whenever they do a

1 project like this, if they would offer some kind of state
2 money as a low interest loan; not a giveaway, but like a
3 low interest loan to help the businesses survive.

4 Like I said, we're very disappointed with the
5 way the whole thing turned out. PennDOT painted -- they
6 didn't exactly paint a rosy picture at the very
7 beginning, but it turned out to be nothing like this at
8 all, and it's a shame. We were misled when they said
9 about closing the road. That affected our traffic a lot.
10 It hurt business more, but we felt it was in our best
11 interest to get the road done faster, and in fact, the
12 contractor took longer to do it.

13 The reason we're all here is so this doesn't
14 happen to another community in Pennsylvania. We hope and
15 pray that the members here can really effect some change.
16 There are some very good people working for PennDOT, and
17 there are some people that really shouldn't be working
18 for PennDOT. They have no compassion for business owners
19 or the residents, and it's just a job to them. We feel
20 as business owners we need a little more consideration.
21 We're paying a lot of tax dollars, and we're not getting
22 the services for it.

23 The speed of the project; when they awarded it,
24 I think the project originally called for 387 days.
25 Being in a bakery, people come in and they like to talk.

1 I've talked to a lot of people about this, engineers,
2 people that were actually qualified, that knew what they
3 were doing. They couldn't believe that they were awarded
4 this period of time, because, really, the job could have
5 been done in 200 days, they said, with a reliable crew,
6 with equipment that worked. I understand Primo had a lot
7 of breakdowns. They're using antique equipment.

8 So many people were affected by this. I think
9 there are like 10,000 cars that drive through Dublin on
10 any given day. These people have been forced out around
11 into the countryside, and the neighboring townships
12 wouldn't provide detour signs. I know the amount of
13 accidents increased on the back roads, because they just
14 weren't used to the traffic, the frustration level.

15 Everything has been blamed on the contract, and
16 we haven't been able to see the contract yet. We were
17 told this was a matter of public record. We have a
18 lawyer asking to see the contract just to make sure that
19 what PennDOT has told us is true, and apparently, they're
20 stonewalling us.

21 Whoever worded the contract apparently gave the
22 contractor a lot of leeway, and as business owners, when
23 you're losing money every day, it just hurts. This is
24 money that has to be made up sometime at a later date,
25 and Pennsylvania ultimately loses tax dollars.

1 I have letters that I brought with me that I
2 believe Tom is going to submit. The IGA has had to let
3 go 30 people. When you only have a community of 2,000,
4 30 people is a lot. They used to be a good employer. It
5 wasn't just minimum wage jobs. They were providing good
6 jobs.

7 Basically, like I said, the frustration that
8 was evident in the letters that were presented at the
9 very beginning just about tells the story for the rest of
10 us, too, so I'll just pass it to somebody else then.
11 Thank you.

12 CHAIRMAN HESS: Thank you.

13 MS. McDEVITT: Good morning. My name is Jeanne
14 McDevitt, and I manage a retail business within the
15 greater Dublin business area. I'm probably going to say
16 some of the same things that everyone else has said, but
17 I am here this morning on behalf not only of the business
18 that I manage, but also as a part of the Greater Dublin
19 Merchants Association and all of those commercial
20 facilities and retail facilities affected by the closure
21 of the road.

22 We have already begun to count our losses.
23 People, as they pointed out, have lost jobs. Two
24 businesses have closed. One has moved to a better
25 location. We have also two new restaurant owners in the

1 area who are struggling because they were told that the
2 road was going to open in August of '95.

3 Commercial facilities, of which there are
4 numerous, are struggling with shipping and deliveries,
5 and where do the tractor-trailers go. Hours have been
6 cut by many of the establishments and profits are surely
7 being eaten up. Many of us have paid for signs, we have
8 paid for maps, we have paid for advertising, all at a
9 time when our profits are really at an all-time low.

10 We are approaching, as was pointed out, the
11 second holiday season, and the road is closed. In
12 retail, that is notoriously your survival period. So for
13 a second holiday season to go by in this condition, it
14 questions the future of the businesses for the area.
15 That fourth quarter represents three months, not three
16 weeks, which we would be left with, if we were to believe
17 the November 24th opening date.

18 Our time and our energy has been diverted to
19 oversee someone else's job. Frankly, the onus is on
20 PennDOT to provide us with an open road.

21 It is for these reasons that we have all come
22 here today. The main artery to the heart of a very small
23 community has been closed, and we need your help in
24 opening it. In good faith, we believed a state agency
25 when they said closing the road would allow them to

1 complete the job more expediently. Yes, mistakes were
2 made, machinery was in disrepair, and at one point, three
3 weeks passed when the contractor did not appear; all
4 this, and the weather has been perfect. A stretch of
5 road one-fourth the length of the original section done
6 last year is taking longer, and the road is completely
7 closed.

8 We're frustrated, we're disillusioned, but
9 frankly, we're disgusted with rhetoric about contracts
10 and allowances. The structure of a contract should
11 consider community impact, especially when a road is
12 being closed completely. There should be a heightened
13 sensitivity to local, financial impact. Adjustments to
14 the time frame should be a priority.

15 The opportunity was there to complete this
16 road, and yet, full advantage was not taken. PennDOT was
17 responsible to see the deadline was met. They designed
18 the contract and the selection process. It is time to
19 review both. It is obviously not working. Please do not
20 allow this to happen to another community in the
21 Commonwealth. Thank you.

22 CHAIRMAN HESS: Thank you.

23 MS. GROSS: I'm Celeste Gross. I am the owner
24 of Fireside Cards and Gifts in the little center where
25 the businesses are going out of business. I have a brief

1 statement. I have sent copies of this letter to Andrew
2 Warren, District Administrator of the Department of
3 Transportation; to Thomas Druce; and to Paul Clymer.

4 This is very hard to do, gentlemen. It is
5 actually nine years that I've been in business, so here
6 we go. We, meaning my daughter, who is also my partner,
7 would like to express our disgust with the progress at
8 which conclusion of the Route 313 project is being
9 handled. The Pennsylvania Department of Transportation
10 has, through the current length of the project, held
11 several meetings with Dublin area businesses in an effort
12 to apprise merchants of the scheduled completion of the
13 project.

14 During the early summer months of 1995, PennDOT
15 issued statements that the anticipated completion of the
16 traffic detour project would be the end of October, 1995.
17 This completion date was accepted, with reluctance, by
18 area merchants, with thoughts that the opening of Route
19 313 through Dublin at the announced time would allow
20 businesses the opportunity to attract back customers in
21 advance of the upcoming Christmas shopping season. It
22 was with distress we recently heard of the extension to
23 November 24th given to general contractor, Primo
24 Construction, Exton, Pennsylvania.

25 Prior to the start of this project, our

1 business was thriving and experiencing a 25 to 30 percent
2 annual growth over the past eight years. It was with
3 this strength that for many years we were capable of
4 expanding our product lines, services to our customers
5 and the community. Unfortunately, during the past year,
6 we have seen a notable, major decrease in floor traffic
7 and sales. This regression is directly attributable to
8 the construction work being performed on Route 313.

9 No matter what efforts are made to persuade the
10 commuters who would normally travel Route 313 from
11 Quakertown to Doylestown and outlying community residents
12 that the road is open to the business area of Dublin, we
13 regularly hear comments from people that they did not
14 know they could get to certain businesses because of the
15 construction project.

16 In order for our business to survive through
17 the last Christmas season and to this date, we have
18 eliminated all expenses deemed unnecessary, such as
19 sponsorship of community events and activities,
20 advertising, and have sought to contain costs greatly.
21 It was impossible for us to take our normal draw at
22 times. You know what that is? Thank you.

23 During this time period, we have accumulated
24 increased debt, which we have accepted reluctantly as the
25 cost of staying in business during the reconstruction

1 period. However, for us to remain in business for next
2 year, we desperately need Route 313 to open to through
3 traffic in October, as announced previously by PennDOT.
4 We have stocked our inventory with product to sell in
5 anticipation of the return of normal floor traffic.

6 We feel that no extension should have been
7 given to the general contractor for the project, as the
8 delays caused in the project have been through his total
9 control. There have been periods of days, and in July
10 and August weeks, when the general contractor would not
11 sufficiently staff the project with manpower to perform
12 work required. The general contractor has periodically
13 pulled the few employees he had manning this project off
14 the site to complete other PennDOT projects where
15 completion schedules were failing, such as those in
16 Warrington and Lancaster. This I found out myself, not
17 by PennDOT or anything. We have become our own
18 investigative team.

19 There have been days when employees were
20 dismissed early from the job site due to the lack of
21 materials to complete the task. Recently, it is our
22 understanding that curb work was not completed on the
23 date scheduled due to the fact that the concrete supplier
24 refused to deliver material to the job site until
25 balances due were paid for previous portions of this

1 project.

2 In closing, it is our hope that through this
3 communication, that no one else, and I mean no one else,
4 no small town, no large town, should be put in this
5 position. My American dream has turned into an American
6 nightmare. PennDOT has to change its regulations. Thank
7 you.

8 CHAIRMAN HESS: Thank you.

9 MR. KNISLEY: Good morning. My name is Jack
10 Knisley, and I have the Dairy Queen in Dublin. I have a
11 letter from my accountant stating as to my -- it's a
12 revenue and expense comparison, 1995 compared to '90
13 through '93. I didn't include '94, because we were
14 already into the construction in '94; so from '90 to '93.

15 Here's the letter. It says, "Dear Gerry and
16 Jack: I am writing this letter to place into writing an
17 evaluation I have prepared of your Dairy Queen business
18 located on Route 313 in Dublin, Pennsylvania. Due to the
19 ongoing reconstruction of Route 313, we have seen a
20 serious erosion in many of the key indicators of your
21 business. The factors I considered in my evaluation are
22 gross sales, gross wages payable to officers, rent and
23 mortgage payments also payable to yourselves as
24 owners/operators.

25 "I have taken figures for 1990, 1991, 1992 and

1 1993. Upon determining these amount, I then averaged
2 these four years, and using that average, compared it
3 with the figures for 1995. The following results are
4 somewhat traumatic.

5 "Analysis of Decreases, 1995 Compared to
6 Average of 1990 through 1993: Sales Volume, percent
7 decrease, 39 percent. Officers' Salaries, percent
8 decrease, 95 percent. Mortgage and Rental Payments to
9 Owner/Operators, percent decrease, 100 percent (No
10 payments in 1995)."

11 I'm going to submit this letter, but, "The
12 information summarized above should come as no shock to
13 anyone. As in any retail establishment, three primary
14 contributing factors to success are location, location
15 and location. Unfortunately, during the last couple of
16 years your location has been anything other than good.
17 The protracted reconstruction of Route 313 has definitely
18 had an adverse effect on your business income.

19 "We can only hope that Route 313 is finally
20 completed and open, traffic will return to normal flows,
21 and your business will regain the vitality experienced
22 prior to the closure of this primary route through
23 Dublin.

24 "If you have any questions regarding any
25 portion of this letter, and specifically the percentages

1 shown, please do not hesitate to contact me. Good luck
2 in your future business endeavors, and I hope for a
3 speedy reopening of the highway.

4 "Styer Associates, Mark A. Styer, Certified
5 Public Accountant."

6 Now, they closed the road. My business has
7 dropped. As you can see, seven days a week, not a nickel
8 profit. They park their equipment right across the
9 street from my little store, and at times, that equipment
10 didn't move for weeks. One time it was three weeks and
11 one day that the equipment did not move. They have four
12 PennDOT inspectors on the job, and most of the time there
13 were five or six Primo men on the job. I think it seems
14 a waste of money to have all those inspectors when you
15 don't have any workers.

16 The whole thing is so frustrating. When you
17 don't see people working and you know you're not making
18 any money and you won't make any money this whole season,
19 it's frustrating.

20 Now, they've given him an extension on the
21 contract and are forcing him to finish the binder on the
22 roadbed so that they can open the road by the 24th of
23 November, but that doesn't include the driveway
24 entrances, the sidewalks, curbs, and so forth, which are
25 all in disarray through the whole town; not just in the

1 half that they're working now, but the whole town. So
2 they'll be back next year when I reopen, and I'll have
3 the same problem again next year, and I cannot afford it.
4 I wanted to retire in '95. I can't now. It looks more
5 like 2000 now before I'll be able to recoup some of the
6 losses. Thank you.

7 CHAIRMAN HESS: Thank you.

8 MR. RYMDEIKA: My name is Frank Rymdeika. I
9 have a fireplace and a barbecue store in the middle of
10 town. I started it 20 years ago. It takes 20 years to
11 build a business, and you get people like this that come
12 in and don't give a darn about anything. They don't even
13 give me access for 30 days that my people could even come
14 across the barrier. This is absolutely terrible. I just
15 hope that you gentlemen and ladies would look into it,
16 that no other community will go through what we have gone
17 through.

18 The people that spoke before me said a
19 mouthful, and I really don't want to take any more of
20 your time, but please, really give this a lot of
21 consideration. Thank you.

22 CHAIRMAN HESS: Thank you.

23 Are there any questions at this time from any
24 members of the Committee?

25 MR. PARSELLS: Dick, I have one quick question.

1 You said your business was totally cut off for
2 30 days, so your customers could not get into your store
3 at all?

4 MR. RYMDEIKA: It's a good thing we have good
5 neighbors. I'm the next property from a corner, and
6 there is a barroom, and I had talked to this lady, and
7 she let me have my customers come around the back of the
8 barroom, and we have a sign on the back of a pickup truck
9 that people know how to get into my property.

10 Believe me, I had talked to Tom, I had talked
11 to the state people, I had talked to everybody, and they
12 said, "Well, you see what's out front. There is nothing
13 we can do." It has been hell.

14 MR. PARSELLS: Thank you.

15 CHAIRMAN HESS: Representative Leh?

16 REPRESENTATIVE LEH: Thank you, Chairman.

17 First of all, I am aware of the situation down
18 there. I have a brother that lives in Doylestown. My
19 parents live in Pottstown. I live in Reading. I know my
20 parents travel 313, at least they used to, quite a bit to
21 go back and forth. I remember about a year ago they
22 warned me when I was going over there. They said, "My
23 word, don't go that way. You may get lost. You may
24 never get there." Consequently, I go the turnpike now.

25 However, my question is: Exactly what was the

1 project that was being done? In other words, was it a
2 whole new road through town on 313?

3 MS. GRAVER: It was total reconstruction.
4 There were some pipes laid. The utilities had to be
5 there. I don't know whose responsibility it was, but it
6 did not seem like coordination went real well with all of
7 the utilities. The telephone people would be there one
8 day, and the next week you'd have the electric company
9 there.

10 Again, when you look at the contract and you
11 look at the procedures that PennDOT is doing, maybe this
12 is something that needs to be looked at, to make sure
13 that coordination goes well. Obviously, there are things
14 that happen that you're not going to expect to happen.
15 If I'm correct, I believe the EPA was there for a
16 considerable amount of time in the beginning doing some
17 cleanup work there. So they can say, "It's going to take
18 us two weeks, three weeks to do it, whatever," and when
19 you get into it, you realize you're going to have those
20 unknowns, but I think all of you can see what we're
21 facing in this community and in this area.

22 We have a lot of mending to do, a lot of
23 pulling back together to do, and it is going to be a job
24 that I, with the Pennridge Chamber of Commerce, we're
25 going to try and do our very best effort. We've

1 supported them all along. We're going to continue to do
2 this; and with the help of the legislators that are in
3 our area there, we're going to give this town the support
4 that it needs.

5 The job you people have now is to make sure it
6 doesn't happen to anybody else, and most important, I'm
7 out there representing business. If I'm going to be out
8 there representing business, I have to act like a
9 business. If you're going to be out there as PennDOT and
10 you're going to be the watchdog, then you better act like
11 a good watchdog, and you better have your ducks in a row;
12 and I think PennDOT needs to get some ducks in a row; and
13 perhaps, maybe you people, if this is going to happen
14 again to another community, can find that low interest
15 funding for these people, because it's really tough and
16 it's heart wrenching to go down there.

17 If you need a visual of what this looks like,
18 look at what Bosnia is going through, what we see on the
19 news. That's what this intersection looks like that this
20 gentleman is talking about. When I go through there
21 sometimes, I think I'm going to lose this Dodge mini van
22 and we're never going to see the world again. It's not
23 an easy reconstruction that we're talking about. So keep
24 in mind the mending that has to take place through this
25 community.

1 REPRESENTATIVE LEH: Let me back up a little
2 bit. I just have to finish up here. With regards to the
3 inconveniences to the local businesses, were the PennDOT
4 engineers and the PennDOT people, did they try to help
5 you out? Did they try to coordinate, facilitate
6 anything?

7 The reason I ask this is I had a similar
8 project, maybe not quite the magnitude, but it was
9 through one of my boroughs. It ran about two miles. It
10 was a complete road project, rip the old road up, put the
11 new road down, put new curbing down, utilities,
12 everything. It took about a year, but I'll tell you,
13 PennDOT -- now, there were some problems there, but I can
14 say and I think the citizens can look back now, they said
15 PennDOT really went out of their way to do everything
16 possible to make the contractor do things that would not
17 hurt the business owners or at least it would be minimal.

18 MS. GROSS: Can I answer? I do not feel --

19 CHAIRMAN HESS: Would you please come up here
20 if you're going to speak?

21 MS. GROSS: Sorry.

22 REPRESENTATIVE LEH: I'm just trying to find
23 out if maybe some of the PennDOT officials weren't doing
24 their job correctly.

25 MS. GROSS: I do feel that it was partly

1 PennDOT's fault. We have lost so much business, as we
2 stated before, through our holiday season last year. We
3 begged, we pleaded to give us at least the week before
4 Christmas to save our souls. Our driveway to our center
5 where there were 21 businesses opened at 2:00 Friday
6 afternoon of Christmas weekend. That did nothing for us.
7 PennDOT, nor did Primo listen. They didn't care. They
8 have a guaranteed paycheck. We did not.

9 The week from Christmas to New Year's was
10 wonderful weather. Surprise, they didn't work one day;
11 and yet, they could not give the business community the
12 week before to help us. I feel both were at fault.

13 MR. SUPPLEE: If I can just --

14 CHAIRMAN HESS: Please identify yourself for
15 the record.

16 MR. SUPPLEE: Tom Supplee, the Borough Manager.
17 What occurred there with the PennDOT officials that I
18 found a larger percentage of the time was and in regards
19 to Mr. Rymdeika with his business is that the PennDOT
20 representatives on-site could actually walk by and be
21 totally oblivious of what's taking place, whether there
22 is no access to a driveway and such. It would go on for
23 a period of a week, two weeks, three weeks to that point.
24 Then a merchant or a resident would contact me, and I
25 would in fact go out there, and I would have to take that

1 PennDOT representative and lead him by the hand and ask
2 him to please put the driveway or some type of access.

3 At times I even dealt with the foreman that was
4 on with the contractor. Or sometimes I could get a
5 better response out of him than I could the PennDOT
6 representative. Or I would go to both, because I figured
7 one or the other will give me some kind of response. But
8 that's normally the way the project has been progressing.
9 It's like they do not see there is a problem there unless
10 you bring it to their attention and say, "We need to do
11 something here."

12 In the case of Mr. Rymdeika, their solution for
13 access to his business was going across two other private
14 property owners' businesses. In their minds, they looked
15 at it like, well, cars can get in there. They can just
16 drive across those people's property to get in there, and
17 that's the way they dealt with it.

18 REPRESENTATIVE LEH: Thank you, Mr. Chairman.
19 That's all the questions I have.

20 MR. RYMDEIKA: Can I say one thing?

21 CHAIRMAN HESS: Please identify yourself for
22 the record.

23 MR. RYMDEIKA: Frank Rymdeika. When the
24 PennDOT officials would tell this contractor that they
25 wanted this done or wanted that done, the contractor just

1 looked at them and said, "Bologna; we'll do what we want
2 to do." So that was it.

3 Do the PennDOT officials or the people that are
4 there have the right to really insist for them to do the
5 proper thing? I don't know.

6 REPRESENTATIVE LEH: PennDOT's paying the bill.

7 MR. RYMDEIKA: But this contractor won't listen
8 to anybody.

9 CHAIRMAN HESS: Are there any other questions
10 by any of the members?

11 (No response.)

12 CHAIRMAN HESS: Thank you very much.

13 MS. GRAVER: Thank you.

14 CHAIRMAN HESS: Our next person to testify will
15 be Mr. Henry Heck, Executive Vice President of the
16 Associated Pennsylvania Constructors.

17 Henry?

18 MR. HECK: Thank you. Good morning, Mr.
19 Chairman and members of the Committee. My name is Henry
20 L. Heck, Executive Vice President of the Associated
21 Pennsylvania Constructors located in Harrisburg.

22 APC is a statewide trade association
23 representing 230 contractors engaged in heavy and highway
24 construction and another 235 related suppliers of
25 materials and services.

1 I have been asked to comment on the
2 Pennsylvania Department of Transportation's pre-
3 qualification regulations, which is a system for
4 qualification of competent and responsible bidders on
5 highway projects.

6 The pre-qualification of bidders requirement
7 was added to the 1945 State Highway Law in September of
8 1961 due in great part by the efforts of our
9 organization. You may recognize our influence as Act 649
10 reads: "Pre-qualification of bidders. The Department,
11 after consultation with and receiving the advices of the
12 secretaries of Pennsylvania associations representing
13 highway constructors and other parties in interest who
14 have notified the Secretary of Highways, in writing, of
15 such interest, shall, by regulations, establish and may,
16 from time to time, modify or supplement a system for the
17 qualification of competent and responsible bidders on
18 highway projects and furnish to such secretaries and
19 others in interest copies of such regulations. In
20 determining the qualification of bidders, the Department
21 shall consider the following factors relating to the
22 contractors: (1) equipment, (2) past record, (3)
23 experience, (4) personnel of organization, (5) financial
24 condition. In determining the qualifications of newly
25 organized bidders, the Department shall consider the

1 following factors relating to newly organized
2 contractors: (1) equipment, (2) personnel of
3 organization, (3) financial condition.

4 "The Department shall not consider bids from
5 any bidder who is not qualified."

6 The Associated Pennsylvania Constructors
7 wholeheartedly supports the pre-qualification system. We
8 have a standing committee which reviews proposed changes
9 to the regulations and we have meetings with the
10 Department to discuss areas where we may have differences
11 of opinion.

12 The regulations require, when applying for pre-
13 qualification, the completion of three parts. Part 1 is
14 the contractor's financial statement, which includes an
15 annual audit by a CPA or PA. Part 2 is the contractor's
16 organization and experience statement. Part 3 is the
17 contractor's affirmative action statement. Each of these
18 parts must be submitted and approved each year by his
19 anniversary date in order that he may be eligible to
20 continue bidding on PennDOT projects.

21 Each contractor is classified for one or more
22 types of work based upon his submissions. He is assigned
23 an ability factor and given a capacity rating, which will
24 designate the quantity of work upon which he will be
25 eligible to bid. A maximum capacity rating is determined

1 by a formula: $Q=F(C+1/2L+1/2E)$ "F" equals the assigned
2 ability factor. "C" equals the net working capital. "L"
3 is the line of credit. "E" is the book value of
4 equipment.

5 Contractors are rated on the performance of
6 their work on each job by PennDOT District personnel.
7 From these past performance evaluations, an ability
8 factor is assigned to each contractor. This determines
9 how much future work a contractor may undertake. A
10 contractor who has an overall unsatisfactory rating on
11 performance reports will not be pre-qualified.

12 The pre-qualification regulations provide the
13 method and the manner for the processing and evaluation
14 of the capacity and qualifications of prospective bidders
15 to perform highway project work in this Commonwealth.
16 They are designed to assure the integrity and competence
17 of all bidders.

18 I would be remiss if I didn't comment on the
19 previous statement attacking the low bid system. The
20 competitive bid system is the last bastion of free
21 enterprise in this country. You have a group of pre-
22 qualified contractors who bid on a set of plans and
23 specifications, and through that effort, they put
24 together their bids. Through their ingenuity and their
25 skill, they are able to bid on various projects, and this

1 assures the taxpayer of receiving the best possible job
2 for the lowest possible price, and it's a service to the
3 Commonwealth.

4 Thank you for the opportunity to comment. I
5 will be happy to respond to any questions you may have.

6 CHAIRMAN HESS: Any members have any questions?
7 Representative Druce?

8 REPRESENTATIVE DRUCE: Thank you, Mr. Heck. I
9 appreciate you testifying here today. Let me just say,
10 before I actually ask my questions that I have, I agree,
11 I think, with your closing comments. I think that for us
12 to look at the low bid side of this as the problem may in
13 fact correct one problem but then create many others, and
14 I think those contractors in our communities and
15 throughout the state, some, what I understand, more than
16 1,100 throughout Pennsylvania, need to know that they are
17 playing on a level playing field and there are not
18 arbitrary decisions being made, which then brings me to
19 where I think we need to make the changes in this system,
20 and that's at the pre-qualification level. It's the
21 gateway to allowing the contractor through the door in
22 the first place, so that then at least we can say all of
23 these people gathered here, who have submitted bids, who
24 are qualified enough, that if they are low bid, they win.
25 What I want to do is see us try to make some changes

1 relative to the process where they're even let into the
2 room in the first place.

3 You heard folks testify here and I think put a
4 very human face on the consequences. What I think
5 probably most of them, even myself, fail to realize is
6 that when you talk about the pre-qualification method,
7 you read a mathematical formula that, frankly, probably
8 lost me, but then I lost eighth grade algebra anyway, so
9 I didn't gather all that. But let me put some things in
10 English and see if I can get you to follow with me.

11 I have a copy of the evaluation sheet that is
12 given to the district offices and I guess is put together
13 with in large part input by the Project Manager and
14 others in the engineering districts.

15 MR. HECK: Right.

16 REPRESENTATIVE DRUCE: I'm troubled by the way
17 we do not account for timeliness. When I say "we," I
18 mean the Department and I mean the industry, because my
19 understanding is the industry is very much involved in
20 developing this sheet.

21 And I'll just use one example here. One of the
22 areas in which a contractor may be graded is curbs,
23 sidewalks, inlets, manholes. This happens to be letter
24 "K" under a particular subheading. Now, the very first
25 question is: "Was the work completed on schedule?" That

1 is number one, and it is weighted slightly more, I think,
2 to consider that issue. But under "K" is ten other sub-
3 titles. In other words, you can strike out completely on
4 point one, do well on setting of line and grade control,
5 form of reinforcement, installation of precasts, all of
6 those other things, and completely overcome the fact that
7 you were delinquent, seriously delinquent.

8 If you look at the whole system here, that's
9 how this grading system is set up, so it's no wonder that
10 timeliness never surfaces to the top, as it should,
11 because it is submerged in a whole host of other
12 considerations.

13 When you look at the confidential report that
14 is put on past performance, this particular sheet, which
15 I guess the industry has input into, nowhere on this
16 sheet is the word "timeliness."

17 I guess my question to the industry and to you
18 specifically here today, particularly listening to these
19 folks who came here, who could easily be from Lewisburg
20 or Marysville or anywhere else in the Commonwealth today:
21 Do we not need to make timeliness the element that it
22 should be for the people of Pennsylvania and put it
23 directly on the form, be graded on its merits straight
24 up, and allow the Department to, if you will, evaluate a
25 contractor where timeliness in fact has meaning in the

1 process?

2 MR. HECK: Timeliness is very important. Each
3 one of those areas -- and again, PennDOT will testify
4 later, and they're probably more knowledgeable in those
5 particular things -- but timeliness, each one of those
6 questions is rated and given a rating. In other words,
7 they don't carry the same exact weight in the final
8 calculation. Timeliness is important.

9 The way the contractor makes his money, quite
10 frankly, because he is the low bidder, is to get in to do
11 the project, get it completed as quickly as possible and
12 hopefully ahead of schedule, and that's the way that he
13 is able to make ends meet on the thing; and if there is
14 any profit, then that's the way he realizes his profits.
15 So it is in his best interest also to complete a job
16 timely. There may be some extenuating circumstances that
17 prevent that from happening, and I think we have to look
18 at that on a case by case basis. But to answer your
19 question, timeliness is important. We agree with that
20 wholeheartedly.

21 REPRESENTATIVE DRUCE: Would your organization
22 support working with the Department to modify the form so
23 that timeliness can stand alone and not be submerged with
24 many other issues under a given sub-setting?

25 When I say "timeliness," I'm going beyond the

1 time in which the Department even grants extensions for
2 extenuating circumstances that contractors rightly should
3 be entitled to under a variety of circumstances on any
4 given job. When I talk lateness, I'm talking beyond that
5 point, where you're even into liquidated damages. All we
6 seem to have now is a system that fines these
7 contractors, and frankly, from what I see on this
8 particular contractor here, that doesn't seem to be much
9 of an incentive, because he is fined left and right,
10 several times \$90,000 in my engineering district, and it
11 doesn't seem to be a motivator; but maybe if timeliness
12 counted for something, that when we went through the pre-
13 qualification process the next time, the Department would
14 be in a position to reduce the amount of work so that
15 what we don't have is an overextended contractor.

16 I would think that for the rest of your
17 contractors, the 95 percent that are doing a good job in
18 Pennsylvania and finish on time, I wouldn't think they'd
19 have a problem putting timeliness on this sheet.

20 MR. HECK: No, I'm sure we wouldn't. I'd be
21 happy to look at that.

22 CHAIRMAN HESS: Thank you. Anything further?
23 Representative Bard?

24 REPRESENTATIVE BARD: The formula that you have
25 described here, Mr. Heck -- and I do appreciate your

1 going into this -- this capacity rating, is this a
2 formula that the results would be open to the public, and
3 this information is open and available to the public?

4 MR. HECK: There are some things that are
5 confidential. The ability factor is one thing that I
6 believe is kept confidential. You're going to have to
7 ask the Department about that.

8 REPRESENTATIVE BARD: Okay. I will. Thank
9 you.

10 CHAIRMAN HESS: Representative Strittmatter?

11 REPRESENTATIVE STRITTMATTER: Thank you.
12 Thanks a lot. Nice to see you again.

13 MR. HECK: Nice to see you.

14 REPRESENTATIVE STRITTMATTER: Is Primo
15 Contracting a member of the Associated Pennsylvania
16 Constructors?

17 MR. HECK: Yes, they are.

18 REPRESENTATIVE STRITTMATTER: Does APC have any
19 membership standards?

20 MR. HECK: Our association was founded on
21 skill, integrity and responsibility as the foundation.

22 REPRESENTATIVE STRITTMATTER: Are there any
23 standards for membership or just membership dues paid?

24 MR. HECK: There are. According to our bylaws,
25 a contractor to become a member of the Association must

1 have performed in the past in a competent and responsible
2 manner.

3 REPRESENTATIVE STRITTMATTER: Do you have any
4 standards to judge quality performance?

5 MR. HECK: We do not have peer review of
6 performance.

7 REPRESENTATIVE STRITTMATTER: As a professional
8 and, as I know, you've done a wonderful job of
9 representing I guess most of the people who do this kind
10 of work, do you feel, as a professional representing a
11 professional society of constructors, do you feel any
12 obligation to correct this bad situation?

13 MR. HECK: Naturally, we want to see
14 contractors perform at the highest quality possible.
15 Exactly what we can do to help in that regard is a
16 question, but I'm sure we would do what we could.

17 REPRESENTATIVE STRITTMATTER: I'd appreciate
18 that, because we have a lot of communities, but this is
19 one that has come to us. I know everyone has their
20 story, but certainly, this is their day and we're going
21 to concentrate on it. So I would hope that by the end of
22 the day, that we would have the solution from all parties
23 that are concerned and that we take care of this
24 community. So I would appreciate your help in that, as I
25 know you've always been helpful in the past. I know,

1 like with ourselves, it's always tough to root out the
2 bad within our peers, but I think this one time when we
3 have to work together to try to correct something that
4 has really gone awry here. Thank you.

5 MR. HECK: You're welcome.

6 CHAIRMAN HESS: Thank you. Thank you, Henry.

7 MR. HECK: You're very welcome. Thank you.

8 CHAIRMAN HESS: As we move along, our next
9 testifier will be John V. Colona. John is the president
10 of Primo Construction Company, Incorporated.

11 MR. LOGAN: Mr. Chairman, I am Paul Logan, and
12 the other gentleman is Mark Anthony Colona.

13 MR. COLONA: Mr. Chairman, members of the
14 Committee, I have prepared a statement that this morning
15 I'd like to read for the record.

16 My name is John Vincent Colona, and I am
17 president of Primo Contracting, Incorporated. I
18 appreciate having been given the opportunity to speak to
19 you today on the issue of PennDOT pre-qualification.

20 The privilege and right of being able to work
21 for the Commonwealth is very important to contractors
22 such as ourselves and our industry. PennDOT, the agency
23 which is responsible for most of this work, provides a
24 majority of the projects Primo does throughout the year.
25 Therefore, we do not take pre-qualification lightly, nor

1 do we like having this privilege put in jeopardy. We
2 certainly realize that all involved in the work on the
3 infrastructure of our area must become more and more
4 cognizant of the impact we have on the communities in
5 which we perform our services.

6 Times have changed from working as you wanted
7 with no regard to the people that were affected by the
8 project. As a resident of the southeastern Pennsylvania
9 area for over 39 years, we have seen this area change
10 dramatically. This change and the consequences it has
11 brought about have given our industry a perplexing
12 problem to deal with. How do you do a project quickly,
13 safely, environmentally sensitive, and economically, and
14 have as little impact on a community as possible and
15 still make money? This problem is a perplexing one, to
16 say the least.

17 We believe that partnering would be the best
18 way to accomplish this goal. By partnering, we need to
19 put the citizens, Pennsylvania, the legislators and the
20 contractors together from the start to make an effort to
21 accomplish our objectives, both collectively and
22 individually. We feel that if this were done from the
23 outset on some of these sensitive projects, many problems
24 could be avoided. If certain problems were unavoidable,
25 at least all could have some input as to how prudently

1 they could be resolved. At worst, all affected would be
2 properly informed of what the problems were and how they
3 would be affected.

4 One of the major dilemmas we face is that the
5 citizenry doesn't know what the contractors or PennDOT
6 are up against trying to make things safer and more
7 efficient for the taxpayers. This is not their fault.
8 However, if they are aware, I feel it would make all
9 present here today much more understanding.

10 The Commonwealth has the fourth largest amount
11 of road miles in the country to maintain. In order to do
12 this, they need massive amounts of money. This money
13 over the last eight years has become increasingly scarce.
14 For whatever reason, all have been asked to do much more
15 with much less. This puts people on our end of the
16 spectrum in a very disadvantageous position. When a
17 problem occurs in regards to an unforeseen condition on a
18 project, no longer can the quickest fix be applied due to
19 budgetary restraints. Therefore, what should be done
20 isn't, because there isn't the money to pay for it. The
21 contractor can't do it out of the goodness of his heart
22 simply due to the fact that the jobs are bid so tightly.

23 Many jobs today encounter the unknown and
24 unforeseen problems due to their nature. We are now in a
25 maintenance mode of construction, as not one of building

1 new roads in the countryside. Since most of these roads
2 that we're working on were originally built and then
3 brought the people in to live around them, conditions
4 aren't always as they would seem to be. This is where
5 more money to work with would be a great help in
6 expediting this process and making everyone a lot
7 happier.

8 We're not here to point the finger at anyone.
9 We simply feel that our industry is a service-rendering
10 one, and the better we all understand what is going on
11 around us, the more efficient and pleasurable the tasks
12 at hand may be completed.

13 In conclusion, the pre-qualification process is
14 not perfect, but it works as well as can be expected.
15 All cases and individuals must be looked at individually
16 according to the circumstances surrounding and dictating
17 their work. I feel this is done on the most part, and
18 therefore, I would suggest leaving well enough alone.

19 We'll be glad to answer any questions we can.
20 However, I must point out that we are involved in
21 negotiations and litigation on certain issues in regards
22 to certain projects. We cannot jeopardize the
23 negotiations by making statements here today that might
24 do that. As long as they do not interfere with that, we
25 have no problem answering anything you want to ask.

1 Thank you very much.

2 CHAIRMAN HESS: Do members of the Committee
3 have any questions?

4 Representative Druce?

5 REPRESENTATIVE DRUCE: Thank you for taking the
6 time to testify here this morning. Before I ask for your
7 input about general pre-qualification issues related to
8 the Department, let me see if I first can get some sense
9 of Primo's ability to deal with the work that it has been
10 awarded from the Department.

11 MR. COLONA: Yes, sir.

12 REPRESENTATIVE DRUCE: From what I have been
13 able to gather, looking back to 1990, in the engineering
14 district that includes all of southeastern Pennsylvania
15 -- I believe Berks and Lebanon Counties are another
16 engineering district, if I'm correct, and I have
17 information on those two counties as well -- Primo was
18 awarded 35 jobs in those areas, most of them running
19 somewhere within the hundreds of thousands of dollars,
20 2 million range in terms of the cost of the project. Of
21 those 35 projects, your company exceeded the contract
22 dates, the adjusted contract dates, not the original
23 contract dates, but those additional days allocated by
24 PennDOT, if they were so allocated, 19 out of the 35
25 times, which means that more than half of the time, your

1 company is late finishing work that it has been awarded
2 to do by PennDOT. Eleven times you were fined by the
3 Department for this lateness, one as high as \$138,000.

4 Can I ask what situation or what circumstance
5 has your company in that particular light -- which I
6 think is why we're here today, but also because I think
7 what we want to do is strengthen the Department so that
8 we don't have contractors who have that record, because
9 when that record is achieved, we have people like those
10 who are here from Dublin today to tell us the horror
11 stories. They are the end result of being late 19 times
12 out of 35 jobs.

13 Can you enlighten the Committee on why there is
14 this problem?

15 MR. COLONA: I would love to. First,
16 Representative Druce, of the 19 jobs -- I don't have them
17 in front of me, but of the 19 jobs that you have alluded
18 to, I know of five right off the bat that are currently
19 involved in negotiation or litigation in order to recoup
20 those times.

21 One thing I must point out to you is that the
22 Pennsylvania Department of Transportation has an
23 automatic system of when a contractor begins to go over
24 time, the allotted time for the contract, they start to
25 deduct liquidated damages; i.e., in your eyes on that

1 piece of paper, that job is over time, when in reality,
2 upon the negotiations that go on after the job has been
3 completed, many times a time extension is granted and the
4 liquidated damage money returned to the contractor.

5 One thing I must point out is since Primo
6 Contracting is an organization that owns no material
7 supply places, i.e., quarries, blacktop plants, concrete
8 plants, we are simply a contractor building roads and
9 bridges throughout the state, for us to be competitive,
10 we have got to vacillate more towards the very difficult,
11 the very construction-oriented type of projects. These
12 projects are the ones that usually come up with the
13 problems that weren't foreseen previously. That's what
14 makes them difficult; i.e., bridges over Amtrak that you
15 can only work from 1:00 a.m. to 5:00 a.m. in the morning,
16 which is a job, SR 3070, in Chester County; the project
17 in Dublin, which involved a tremendous amount of
18 underground utility work, some of it not even being
19 controlled by the general contractor, Primo Contracting;
20 other jobs that have to be done strictly at night.

21 We got here a little late. My counsel informs
22 me that SR 30 in Delaware County has been brought up,
23 probably one of the most busy intersections, if not the
24 busiest intersection, in the Delaware County area. This
25 is where Primo is forced to bid in order to be

1 competitive and make a living. We just happen to be
2 caught in a lot of these areas where the job difficulty
3 factor, if there were one to be assigned, is extremely
4 high.

5 Again, the paper that you're looking at that
6 says 19 jobs, I don't want to get up here like a Boy
7 Scout and say Primo has no faults. That's silly to say.
8 But on the other hand, that 19 job number is totally
9 unrepresentative of what actually will be the final
10 outcome; and to use that as a guideline in judging
11 Primo's performance is, in my opinion, not fair due to
12 the fact that a lot of those jobs have yet to have been
13 washed out.

14 REPRESENTATIVE DRUCE: Let me tell you that the
15 list that is in front of me are closed-out jobs. We've
16 yet to include Dublin Borough. We've yet to include
17 Radnor Township. These are closed-out jobs.

18 Let me point out then maybe the point you were
19 making about the liquidated portion of it, and maybe this
20 will zero in on it. Out of the 16 times that on these
21 closed-out jobs you were late, late by the computer
22 saying over, 11 of those you settled with PennDOT for
23 liquidated damages. So on 11 of the 16 jobs, you, in
24 essence, then had to pay -- I have the amounts here that
25 you then paid. So it tells me that by agreeing to those

1 liquidated damages or being assessed that in closed-out
2 projects and in fact you were late would suggest to me
3 that five times there must have been extenuating
4 circumstances where you and the Department agreed that
5 the additional time over must have been okay or
6 acceptable, because there were no fines involved. So
7 clearly, the numbers I have are not basing it on what is
8 happening today, but these are past records.

9 It just gives me the sense, Mr. Colona, that
10 your company is overextended. You didn't hear my opening
11 statement when you came here, but it was not my intention
12 to try to put any Pennsylvania business, particularly
13 anyone in Dublin or anywhere else or your company, out of
14 business. I want contractors to get work that they can
15 handle; and from what I have seen in the two jobs that
16 your company has done in my district, there have been
17 crews there clearly inadequate to handle the job.

18 I'm not an engineer, but I've also got another
19 job going on outside of my district office right now
20 along Street Road in Warminster and Warrington Township,
21 and there is another company handling that work, and I
22 can tell you there are full crews there practically every
23 day. That project is moving along, and there are not the
24 problems there that we've had in the other two jobs which
25 are not on my list.

1 So my question is: Are there circumstances
2 that maybe the Committee needs to be aware of through the
3 process or yourself that is providing this situation and
4 then, as a result, impacting communities like Dublin?

5 MR. COLONA: Could I ask you a question, sir?

6 REPRESENTATIVE DRUCE: Sure.

7 MR. COLONA: Is SR 3070 in Chester County on
8 your list as one having liquidated damages assessed and
9 us settling on, supposedly?

10 REPRESENTATIVE DRUCE: Could you repeat the
11 number again?

12 MR. COLONA: SR 3070.

13 REPRESENTATIVE DRUCE: No. I only go up to
14 1992 on Chester County projects. Are you talking about
15 just the bridge project?

16 MR. COLONA: It's a bridge project in Caln
17 Township.

18 REPRESENTATIVE DRUCE: Which is Coatesville?

19 MR. COLONA: Yes, sir.

20 REPRESENTATIVE DRUCE: I would probably need
21 someone from the Department to identify their codes for
22 me. They assessed you fines of \$93,000, of which you're
23 in negotiation, because that's the number I have here on
24 this particular job, which is listed as -- I don't know
25 what these numbers are, but it's not identifying a route

1 number. It is a CMS number, if that's of any help to
2 you. It was let in 1991. My sense is this may predate
3 the Coatesville project.

4 MR. COLONA: The Coatesville project was
5 completed last July. The beginning of last July is when
6 that project was opened to traffic.

7 REPRESENTATIVE DRUCE: When was it originally
8 let?

9 MR. COLONA: I have three years previous, 1990.

10 REPRESENTATIVE DRUCE: I'd have to have someone
11 from the Department identify the codes here. I've got
12 seven Chester County projects listed here, every one of
13 those additional days by your company to complete it; and
14 of those seven, four of them received monetary damages,
15 liquidated damages assessed to Primo. The last date was
16 1992 was the close-out. I don't have anything in '94 or
17 '93 of work that is here on this particular sheet.

18 MR. COLONA: Without having the privilege to
19 look at that, I can't make a specific comment.

20 REPRESENTATIVE DRUCE: I don't want to try to
21 zero in on any one or on Dublin, in particular. I guess
22 I'm making a general assessment of your work within the
23 engineering district, including Lebanon and Lancaster
24 Counties. Why is that record --

25 MR. COLONA: As you alluded, Representative

1 Druce, you alluded to the contractor working outside your
2 door. I believe it's Glasgow.

3 REPRESENTATIVE DRUCE: I'm sorry?

4 MR. COLONA: I believe it's Glasgow,
5 Incorporated, working outside your door.

6 REPRESENTATIVE DRUCE: Yes.

7 MR. COLONA: One thing I've got to point out to
8 yourself and the Committee, Primo is a smaller
9 organization. We're nowhere near the size of Glasgow,
10 nor Morrisey, nor these large people, and something that
11 has got to be understood is if I'm working on Job A, B
12 and C that we bid to be built according to the
13 specifications and a problem erupts on Job A and B, not
14 due to the control of Primo Contracting, that seriously
15 affects the other jobs.

16 People don't want to know in Dublin that there
17 is a problem here, but Primo can't throw extra forces
18 here because they're under contractual obligation to
19 finish work elsewhere. We cannot and I do not think it
20 is fair to ask a contractor to keep, in essence, a group
21 of individuals sitting back in the corner as
22 reinforcements, that should a problem occur on a project
23 due to a design omission, due to extenuating
24 circumstances that are beyond a contractor's control,
25 that the contractor should go out, hire a whole bunch

1 more people, buy more equipment in order to meet
2 deadlines that basically can't be met not due to his
3 problem.

4 I'm going to give you an example. You alluded
5 to a project of \$90,000 liquidated damages on Marsh Road
6 I believe it was in your district. Montgomery County?

7 REPRESENTATIVE DRUCE: No. I am Bucks County.
8 No; the \$90,000 I thought was what was assessed for the
9 Coatesville bridge project.

10 MR. COLONA: No; the Coatesville bridge project
11 was about 115. If you alluded to the Coatesville bridge
12 project, we have submitted to the Department over one
13 year ago a packet requesting a 500-day time extension.
14 To this date, there has been no response. In the
15 meantime, our \$108,000 of liquidated damages sits there
16 and sits there.

17 Now, this is a project that time extensions
18 have been requested way before the original contract time
19 ran out. They were not addressed. Again, they were not
20 addressed for a number of reasons. I will not point the
21 finger at the Department. Amtrak was involved. We had
22 other municipalities or other situations that were
23 involved in that project.

24 We're not here to point the finger. We feel
25 that, given the opportunity to discuss each project unto

1 itself and paint the picture as it really is and not the
2 way it appears on a piece of paper, everyone involved
3 would get a lot better understanding and be a lot more
4 compassionate for Primo and for all contractors.

5 I sympathize wholeheartedly with the people of
6 Dublin, with the people of any area that we affect. I'm
7 a businessman. I know what it is like to lose money.
8 There is no intention whatsoever to hurt anyone. We're
9 talking about Dublin, and that's what precipitated, in my
10 opinion, this entire thing.

11 We've been granted a 90-day time extension just
12 to have the road open to traffic, not finished. We are
13 being drug through the mud here or in the newspapers,
14 number one, without being given a chance to tell our side
15 of the story before our name appears in the press when,
16 legally, we're not at fault. We didn't get a 90-day time
17 extension just to have it open to traffic because the
18 Department of Transportation likes John Colona or Primo
19 Contracting. We got it because we deserved it.

20 Now, we get something that we deserve, yet
21 we're put on trial and we're asked why we're late.

22 REPRESENTATIVE DRUCE: Mr. Colona, if I could
23 make a comment. I think that is misleading to believe
24 that that's the reason why Primo is here. I think if any
25 contractor encountered the problems they did in Dublin,

1 we wouldn't be here today. It was the problems in Dublin
2 that precipitated many of us to take a closer look and a
3 deeper look; and when I take a look at the track record
4 and having had experience with the company in Warrington
5 Township, there is a repetitiveness here that is
6 frightening.

7 You haven't answered my question -- I don't
8 expect you're going to -- as to what the problem is; and
9 I don't want to go down these individually, because the
10 larger picture speaks for itself. There seems to be a
11 problem, and that's why I asked the Committee to hold
12 this hearing; not over one job -- I certainly wouldn't do
13 that, and I certainly understand the situations that come
14 up -- but to talk about another project in my district in
15 Warrington Township where the contract was let for 360
16 days and your crew didn't show up until into the 200th
17 day of the contract and then midway through walked off
18 claiming slow payment from PennDOT. And I'm with you on
19 that. You'll take that one. They gave you an extension
20 on it. But I know the work that was done there, because
21 I went through that intersection every day to get to my
22 office. There were skeletal crews there. And when I see
23 the big picture here, that's what prompted me to urge the
24 Committee to look into this and then look into the issue
25 of pre-qualifying. Not Dublin. Dublin just puts a

1 personality and puts human faces on what happens here.
2 But you've yet to tell me why it is that the company has
3 a track record of being late.

4 I understand circumstances, but circumstances
5 happen a few times. They don't happen more than half the
6 time, and they don't happen close to 80 percent of the
7 time liquidated damages are assessed on these jobs. I
8 don't understand it. If you would tell the Committee,
9 "We're overextended or we've run into some problems," and
10 we're enlightened and maybe we can understand, but I
11 don't think the Committee wants to hear on each job what
12 little thing went wrong in those jobs, because then
13 PennDOT ought to have said to you, "Primo Contracting,
14 we're going to have you do four jobs this year instead of
15 six, because you have a track record of not being able to
16 handle six."

17 Do you think that's a fair thing for the
18 Department to say given the record that I've articulated
19 here?

20 MR. COLONA: Absolutely not, sir, and I'll tell
21 you why.

22 REPRESENTATIVE DRUCE: How can you do the extra
23 work?

24 MR. COLONA: I'll tell you why I don't think
25 it's fair. When we bid on a project -- Route 30 in

1 Villanova has been brought up. When we bid on that
2 project, it was \$1,700,000. That job to date is
3 \$2,700,000. Now, there aren't too many people who know
4 how much it has escalated in cost, but there are a lot of
5 people complaining that it's not done. Well, when a job
6 goes from \$1.7 million to \$2.7 million, when Dublin goes
7 from \$1.7 million to \$2.2 million, when a lot of these
8 projects go so far over, how can a contractor anticipate
9 that when he prepares a bid, and how is it fair to ask a
10 contractor to do four jobs a year?

11 If those four jobs go along perfectly smooth
12 and according to the plans that we are given to bid on,
13 then they're done on time and we could afford to do two
14 more jobs, but we're being penalized, and not just
15 myself, but the industry all the way across the board, by
16 designers, by problems that are unforeseen to anyone at
17 the bidding process that still have to be done.

18 You're saying that you should only do four jobs
19 or you should only do five jobs. If every job goes the
20 way it should, I agree with that. But when the jobs
21 don't go the way they should and a contractor has to get
22 them done in order to not have the merchants of Dublin go
23 out of business, that has got to have an effect on
24 another project of his. It is not one project. You
25 can't look at one project at one time.

1 I'll give you an example, sir. We were a
2 subcontractor on a bridge project, the DeKalb Street
3 Bridge in Norristown. That job went quite a bit of time
4 over, and the general was charged a lot of money and
5 liquidated damages. We received a commendation for going
6 in there at our own expense and getting all the roadwork
7 done. We originally submitted a time estimate of eight
8 months to do the roadwork. We did it in four. We were
9 responsible for getting that bridge open on time, not the
10 general contractor.

11 We were just on a job, a subcontractor, in
12 Plymouth Township, Montgomery County, for the Hole
13 Corporation. We did all the roadwork for them there as
14 well. Again, we received a commendation from the
15 Department for going in and pushing the job, getting four
16 months worth of work done in a month and one week in
17 order to try and push and get things open for people.

18 There is a lot of stuff behind the scenes that
19 is not seen; and again, and I must reiterate, if you bid
20 on something and that changes, that is not the
21 contractor's responsibility. If a job escalates 60
22 percent, how can the contractor be expected to get that
23 job done and all his other work done on time when he
24 doesn't have the forces to and should not be expected to
25 go out and hire extra people and buy extra equipment just

1 to meet that goal of that one job that was so fouled up
2 from its inception? I mean, it is something that has got
3 to be looked at.

4 REPRESENTATIVE DRUCE: Let me ask you a
5 question relative to that.

6 MR. COLONA: Sure.

7 REPRESENTATIVE DRUCE: Have you been on a job
8 where adjustments have been made to a particular project
9 and you then in that course of time had previously bid on
10 other PennDOT work, and have you ever said back to the
11 Department, "Because contracts have changed elsewhere and
12 we've got increased work responsibility in other places,
13 we're declining to bid there"? Do you turn those bids
14 down then in order to deal with the increased costs
15 associated with another project and the added
16 responsibility and work demands on your crew?

17 MR. COLONA: Sir, number one, we've got a
18 financial capacity that we can do a certain amount of
19 work, and we know when to say no and when not to say no.

20 Could you in all fairness ask a contractor --
21 basically, what you're asking then is: You bid on this.
22 Now there's a problem. Now, what we want you to do is
23 not bid on anything else because we've got a problem.

24 REPRESENTATIVE DRUCE: No. You're giving me
25 the story that is affecting your company, and I'm trying

1 to for a second here be in your shoes and understand you
2 a minute. I've got two or three projects, and suddenly
3 the costs have gone up, as in Dublin and maybe in the
4 Coatesville project or the Route 30 project. Costs go
5 up, so I'm assuming you're making also more money.
6 You're working more. It's a longer project.

7 MR. COLONA: That's debatable.

8 REPRESENTATIVE DRUCE: But if I've got that
9 situation in hand and I'm practically to the point where
10 I'm overextended, I don't have any other people to turn
11 to, there is no one sitting in the corner, as you
12 referred to, that I can pull off the sidelines, so the
13 best I'd have to do is sub, I'll tell you what I would do
14 to keep the reputation in my company. If then a bid came
15 and PennDOT called me and said, "We just opened bids this
16 morning. You're low bidder," I would look at my current
17 situation, and maybe when I bid it, all was going well
18 and I could handle the work, but now suddenly I'm
19 extended and I don't want to get into that, so I'm going
20 to tell the Department, "Listen, I'm going to withdraw
21 that bid." Because it sounds like what's happening --
22 and it has to be this to get to the numbers I'm
23 reiterating -- is you're taking that bid on, and then
24 you're trying to get that work done when you're not in a
25 position to do it.

1 For a moment let me accept what you're saying,
2 sir, but then if you're not willing to let work go, then
3 you are accountable for that situation that is occurring.

4 MR. COLONA: Number one, Representative, when
5 we submit a bid, we submit a bid with a bid bond that if
6 we are the low bidder and do not take the job, that bid
7 bond is forfeited. My bonding company -- all of our work
8 is bonded. My bonding company wouldn't take too kindly
9 to me calling them up and saying, "Well, we were low
10 bidder on a \$2 million job, but we can't take it now
11 because we just heard we're going to get an extra at
12 Villanova." Number one, that makes it out of character.

13 Number two, let's talk a little bit about this
14 Villanova project. The Villanova project, we were told
15 that we were getting a \$600,000 extra to totally
16 reconstruct Route 30 within the confines of our contract.
17 We did not bid on three subsequent projects because of
18 that. And Representative Druce, after the third letting
19 when we did not bid any projects, we were notified by
20 PennDOT that the extra work that they thought we were
21 going to do could not be done and was not done. Primo
22 passed up the opportunity to bid on three other jobs
23 because we were told we had extra work. Then it was
24 found out that the extra work wouldn't be prudent, nor
25 the funding available. The extra work was pulled, which

1 hurt us; and number two, we didn't get to bid the other
2 three jobs.

3 When you have a job that lasts over a two-year
4 period or even a year -- PennDOT lettings are conducted
5 every two weeks -- you have to as a prudent contractor
6 look ahead, say I'm going to be done this job this time.
7 I've got to have work lined up for this time. We're
8 looking three or four months down the road always, at
9 least; and in doing that, if something happens to come up
10 on a job today -- you may have been low bidder on a job
11 three months ago. The job doesn't start -- a classic
12 example is we're bidding projects today. They don't
13 start until March or April of next year. Now, how can we
14 anticipate six or seven months ahead as to what may go
15 wrong on another project? It's an impossible thing.

16 If everything was built according to a plan, if
17 everything went perfect, your scenario would work. It
18 doesn't work in actuality just due to the fact of what we
19 run into.

20 REPRESENTATIVE DRUCE: I understand. I don't
21 want to take up any more of the Committee's time, but
22 maybe I would suggest that I think you can look at past
23 history and realize that you're not out of most jobs on
24 time, and you're still going to be in Dublin when you
25 possibly win an award of a job that you say starts in

1 March or April. I'd take a look at that and start to
2 maybe account for the fact that given the track record
3 that at least is presented before me, that you consider
4 that and only consider that, not because I'm trying to
5 put your company out of work, but because I don't want
6 another community, anyone else's community on this
7 Committee, coming before us telling us what the folks in
8 Dublin had to say; and the way the process works, sir,
9 that's exactly the end result of what is happening here.

10 CHAIRMAN HESS: Thank you, Tom.

11 REPRESENTATIVE DRUCE: Thank you, Mr. Chairman.

12 CHAIRMAN HESS: Representative Bard?

13 REPRESENTATIVE BARD: Mr. Colona, I'm wondering
14 has your classification, the formula that Mr. Heck was
15 talking about, has that changed over time?

16 MR. COLONA: Yes, ma'am.

17 REPRESENTATIVE BARD: How many years have you
18 been classified by the Department?

19 MR. COLONA: Pre-qualified?

20 REPRESENTATIVE BARD: Okay, pre-qualified
21 according to this formula.

22 MR. COLONA: I believe it's ten years. I may
23 be a little off. Our inception came about in 1982.
24 Thirteen or 14 years.

25 REPRESENTATIVE BARD: When your classification

1 or your qualification rating is determined and you say
2 that that has changed over the years according to this
3 formula, can you tell me what has that change been based
4 on? What has caused the change?

5 MR. COLONA: Ma'am, if you look at the formula,
6 there are a number of things. It has gone up when your
7 ability factor is increased. The maximum your ability
8 factor can be increased is one point a year. Contrary to
9 a lot of things that have been said here previously or
10 what those papers may say, we're considered a pretty good
11 contractor. Our work has never been questioned. That
12 affects your factor. The amount of equipment, the amount
13 of money that you have, depending on how profitable the
14 organization is, everything goes in kind of the one bag;
15 they shake it up, and there's your number.

16 If there is more money in the organization, if
17 you've gone out and invested a lot more equipment, if
18 you've done a good job or a bad job, it could go up and
19 down.

20 REPRESENTATIVE BARD: What is your maximum
21 capacity rating at the present time?

22 MR. COLONA: I don't feel as though that is for
23 public information right now.

24 REPRESENTATIVE BARD: And the assigned ability
25 factor, could you tell me that?

1 MR. COLONA: That I don't know off the top of
2 my head. I'd have to go back and look at the pre-
3 qualification certificate. We apply every year. I don't
4 recall what it is right now off the top of my head.

5 REPRESENTATIVE BARD: Do you ever have
6 negotiations with the Department and perhaps with the
7 Contractors Association? Do you ever sit down with them
8 and talk about the maximum capacity rating that they
9 assign you or have someone else from your company do that
10 or how is that handled?

11 MR. COLONA: That is not a negotiable
12 situation. The Department arrives at an ability factor,
13 and that factor is not negotiable. That is whatever the
14 Department gives you. The only thing I do know is that
15 the most it can move in any one year is up one point or
16 down one point. It can only move one point in either
17 direction in any one given year.

18 Again, a major thing involved is equipment and
19 dollars.

20 REPRESENTATIVE BARD: To move onto another
21 aspect, the penalty clause, I understand, for these
22 contracts is \$1,000 a day for each day over the deadline;
23 is that correct?

24 MR. COLONA: That clause fluctuates as to the
25 size of the project. I believe jobs that range from

1 \$200,000 to \$500,000 are \$600 a day; \$500,000 to
2 \$1 million are \$800 a day; \$1 million to \$5 million are
3 \$1,000 a day; and then I believe \$5 million and up are
4 maybe \$5,000 a day. It's a graded type scale.

5 REPRESENTATIVE BARD: Do you feel that those
6 penalty clauses are appropriate?

7 MR. COLONA: Yes. If the contractor does not
8 do his job, I feel he should pay. One thing I do not
9 agree with is how damages are assessed, i.e., our
10 situation in Coatesville, and held, and, when finally
11 remitted, remitted with no interest, no nothing to a
12 contractor just because they haven't been acted upon in a
13 prudent manner by the Department. There may be a lot of
14 reasons for that, but that is something that I don't
15 agree with.

16 The 408, which is the specification that we
17 follow, I believe clearly states that time extensions are
18 supposed to be either granted or denied in a timely
19 manner. One little tidbit of information. A 105-day
20 time extension was requested on the Dublin Borough
21 project on January 6, 1995. Primo Contracting got its
22 90-day time extension to have the job open three weeks
23 ago and still not in writing. We knew the job was going
24 to go over on January 6, 1995, which is why we requested
25 a time extension. Apparently no one else did. And

1 that's documented.

2 I think that damages are fair if the guy
3 doesn't perform. It puts an incentive on the contractor
4 to perform. Let me tell you, no contractor likes paying
5 \$1,000 a day.

6 REPRESENTATIVE BARD: Let me just ask one final
7 question. In California after the earthquake, I
8 understand that the roadwork was repaired quite rapidly.
9 Do you have any perspective as to what was done there
10 that could be done here to improve the timeliness of
11 projects?

12 MR. COLONA: Yes, ma'am. The same method has
13 been followed in Pennsylvania on a number of projects.
14 It is called an incentive/decentive situation. The jobs
15 that have occurred in Pennsylvania, I know of one in
16 Bucks County with James D. Morrisey, \$30,000 a day bonus
17 for every day that you're done early; \$30,000 a day
18 penalty for each day you're done late. I'll guarantee
19 you that if somebody dangles \$30,000 in front of your
20 face, you'll go out and hire the world, and you've got
21 money to buy equipment, and you can get things done.

22 I think taking that one step further, in a
23 project like in Dublin that has got a severe impact on
24 the citizenry, I think putting some type of incentive
25 clause -- certainly not \$30,000 a day. That's for some

1 of these \$30 million or \$40 million jobs -- but putting
2 an incentive clause in there that if you get it open so
3 many days beforehand the contractor will be rewarded
4 \$1,000 a day would certainly make them move faster; and
5 number two, it would help compensate him for the amount
6 of overtime that is paid.

7 One thing that we must remember here, the
8 people working on these projects probably make more money
9 than anyone we know. An unskilled laborer may make \$30
10 an hour. That's straight time. To pay him time-and-a-
11 half, you're looking at \$45. In order to push projects
12 like this, there's got to be somewhere there for the
13 contractor to be able to recoup the money, and you can't
14 put that in your bid. You can't say, "I'm going to get
15 the job open early for Dublin because they're in a bad
16 way up there and it's going to hurt them, and I'm going
17 to work my guys 60 hours a week." You can't do that if
18 your competition is not doing it, because then you're not
19 going to get the work.

20 When a job is bid, there are a certain number
21 of calendar days allotted for it, say 306 based on an
22 eight-hour workday. This is all spelled out in the
23 contract. When you bid a job, you figure, all right,
24 they're giving you 306 days based on an eight-hour
25 workday. Then you basically don't have to figure any

1 overtime on the job.

2 If you do something like you suggest, like they
3 did in California and they've done it here in
4 Pennsylvania, you can move mountains, because the money
5 is there for the contractor to do it with. The people
6 out in California, they made oodles of money.

7 They can put a cap on it as well. You could
8 say you can make \$30,000 a day or \$1,000 a day bonus up
9 to 50 days. After that, that's it. If you put that kind
10 of incentive in front of someone, they have the revenue
11 and they have the light at the end of tunnel that they
12 can go out and hire people. They can take loans from the
13 bank and buy extra equipment and do extra things. It is
14 a very good idea for very sensitive projects. I'm firmly
15 in favor of that.

16 REPRESENTATIVE BARD: Thank you.

17 CHAIRMAN HESS: Representative Zug?

18 REPRESENTATIVE ZUG: Thank you, Chairman Hess.
19 I appreciate the opportunity to be here today; and thank
20 you, Representative Druce, for setting this meeting up
21 today.

22 Mr. Colona, you had said in your opening
23 statement, I believe, about part of the problem being the
24 high traffic counts in Dublin. Is that correct?

25 MR. COLONA: It wasn't in mine.

1 REPRESENTATIVE ZUG: Well, I represent Lebanon
2 County, where we still have horse and buggies, Amish
3 people, on the roads. We don't have quite the traffic
4 that you do down in the southeast, but when
5 Representative Druce mentioned the amount of delay fines
6 that were levied, the highest one was in Myerstown, which
7 is Lebanon County, which is half-a-block from my
8 district. That was an awful project. The citizenry in
9 Myerstown had a lot of problems with your employees.

10 On Thursday, June 16, 1994, we held a meeting
11 in my office a half-a-block from Route 501. We asked
12 someone from your company to come to talk to the borough.
13 District Engineer Barry Hoffman was there. Senator
14 Brightbill had a representative there. And no one came.
15 That was June 16th. Now, that's a long time ago, but my
16 recollection was somebody of importance in your company,
17 maybe even you, was in Myerstown that morning, and we
18 didn't have the cooperation with your company to talk
19 about the problem.

20 MR. COLONA: Sir, I'll be very honest with you.
21 I am the president of the organization, and there was
22 never a request, written or verbal, requesting any of our
23 people to attend anything. I'm here today because I was
24 requested to be here. I wasn't subpoenaed or anything
25 else. I've never shunned the opportunity to speak our

1 peace or to put forth the reasons why things are the way
2 they are.

3 If there was a meeting and someone informed you
4 that we were invited, they were incorrect, because we
5 were never invited. I would have been more than happy to
6 attend.

7 REPRESENTATIVE ZUG: There wasn't anyone even
8 from the site, the Project Manager, for instance, who was
9 working on the project, who was in Myerstown, I assume,
10 since he was the Project Manager, who could have come a
11 half-a-block to the meeting.

12 MR. COLONA: Sir, those things are not -- my
13 people work for me, and if we are not informed of a
14 meeting of that magnitude, then how could they know of a
15 meeting of that magnitude? They work for me, and I would
16 be the one that would tell them to go. If I don't know
17 about it, how can they?

18 REPRESENTATIVE ZUG: Well, that was a long time
19 ago and the details are unspecific, but at that meeting,
20 which was at the specific day, June 16, which was after
21 the original project was supposed to be completed, we
22 were informed by PennDOT that about a third of the
23 project was completed. Now, that was at a point past the
24 due date that was originally accepted by your company to
25 complete the project.

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Could you comment on that?

MR. COLONA: Again, when you say a due date that was accepted by our company, that may have been a due date that was set forth in the contract originally, but that job is presently involved in negotiations to get all of our liquidated time back plus another \$70,000 worth of extras that were done that we have not yet agreed on compensation, and the main problem there, sir, was a utility conflict, where 70 telephone poles had to be moved before we went in to go to work. They were supposed to be moved within the first hundred days of the project; yet, after 230 days of the project, they still weren't moved.

Here's where you get into a situation that I've got to clarify with you. If a contractor has got something that was supposed to be done on a project prior to him getting there -- and again, I think we can even allude to Dublin. If you take a ride up to Dublin, you can look at Primo Contracting right now pouring curb and sidewalk and building the road with all the Philadelphia Electric and Bell Telephone poles in the middle of the road we're building, because they hadn't been moved the way they were supposed to be moved.

Now, I'm in there working at Dublin right now, working around those poles, and I have to go fight with

1 PennDOT or argue with PennDOT to get compensated for
2 having to work around these problems later, after it's
3 done, because of all the heat that has been put on us.

4 In Lebanon, we refused to go to work until they
5 were out of our way.

6 REPRESENTATIVE ZUG: Now, when you sign a
7 contract and accept a project, do you then agree to the
8 terms of the contract?

9 MR. COLONA: Yes, sir.

10 REPRESENTATIVE ZUG: And in the contract, there
11 is a due date?

12 MR. COLONA: Yes, sir.

13 REPRESENTATIVE ZUG: So that by agreeing to the
14 contract, by taking on the bid, you have agreed to
15 complete the project by a certain day by signing that
16 contract?

17 MR. COLONA: Yes, sir.

18 REPRESENTATIVE ZUG: So regardless of the
19 problems with utilities, if there were, you are still
20 obligated by that contract that you agreed to to complete
21 the project; and at that meeting, according to PennDOT,
22 you were one-third of the way done after the due date.

23 MR. COLONA: Sir, you're incorrect in the
24 order. I believe you're a little mistaken. In our
25 contract, there are a number of days given with which the

1 utility is supposed to move the poles. That is all
2 predicated in the contract. They may give 100 days to
3 move these telephone poles. Now, if they don't move them
4 for 200 days, technically, they are in violation of the
5 contract, and the Department as enforcing that contract
6 is in violation of the contract.

7 Conversely, if they're in violation of the
8 contract, if they have broken their end of the bargain,
9 how can you expect the contractor to still keep his end?
10 You know, what you're saying is, "These things are in the
11 way or this is a problem. Now, you go out and spend all
12 the money you have to to work around them to make things
13 unsafe because you've got a completion date, and after
14 everything is said and done, we'll sit down and see if
15 you deserve anything in compensation."

16 We've done that too many times, and too many
17 times -- you know, after the fact is fine. The road is
18 built. The people are driving on it. Or the bridge is
19 completed and people are traversing the stream or
20 whatever. Then you've got to go pay attorneys God awful
21 amounts of money to try to recover what is rightfully
22 yours in the first place.

23 REPRESENTATIVE ZUG: Lastly, I received a
24 letter from a constituent on South College Street, which
25 is 501 in Myerstown. It reads to me: "Dear

1 Representative Zug; thank you for your time and quick
2 action getting my curb redone." Primo had broken the
3 curb. This is new curbing that was put in that is a
4 requirement when new roads are done. "Primo did an
5 acceptable job the second time." Not the first time, but
6 the second time around. "However, I must inform you that
7 when the road crew was milling the street on Tuesday,
8 September 27th, they milled into my new and old curb.
9 The top portion of the new curb has a six-inch piece
10 taken out. My old curb has a three-inch piece taken
11 out."

12 He then goes on in a second letter dated
13 October 2nd: "On Thursday, September 30th, Primo dug out
14 my curb that was damaged by the milling machine on
15 Tuesday. They poured a new curb late Friday afternoon;
16 on Sunday discovered that the slab of my old sidewalk was
17 cracked completely across the width and another semi-
18 circle crack runs perpendicular to the crack."

19 You know, it is these kinds of situations where
20 for some reason there is damage done to private property
21 that doesn't get repaired promptly or quickly that
22 irritates people who live in the community.

23 MR. COLONA: In this particular case, which I'm
24 well aware of, the people who did the damage to the curb
25 were a subcontractor, a milling subcontractor who came in

1 to do the work. One thing that we've got to point out is
2 we are mandated by the federal government and the state
3 to use and give away upwards of 15 percent of our work to
4 minority and disadvantaged business enterprises. I'm not
5 sure right now if the milling operation up there was one
6 of those, but when you sub out a lot of this work,
7 whoever you sub work to is responsible for the damage
8 they may create; and if it takes a little longer to have
9 a sub fix something than the general just going in,
10 that's just due to the fact of trying to get the
11 paperwork in order and get the people responsible for
12 that to come back and take care of it.

13 Another thing I've got to point out is when
14 you're moving around pieces of equipment in a town such
15 as Myerstown or whatever that weigh in excess of 100,000
16 pounds and are 60, 70 feet long, accidents do happen. No
17 one is perfect. If that took a little while or a little
18 too long to get something fixed, we apologize for that,
19 but something that has got to be understood is that any
20 individual thing that happens to any individual person is
21 paramount to that person.

22 If there are 50 people living along a road and
23 everybody has a little thing, "My mailbox is now too
24 close to the road or it's too high since you cut it down
25 or my steps aren't right or my sidewalk has a crack in it

1 from just concrete cracking," which it does, it's all
2 paramount to those people and they're all going to write
3 you individual letters. As a contractor, the prudent way
4 to do it is to go around at once and clean everything up,
5 wait until you're about done, and fix it all.

6 REPRESENTATIVE ZUG: Well, I can understand
7 that, sir, but the problem is it was four times until you
8 got it done, and I don't think at least in this case that
9 the problem was that you didn't do it. You did it. You
10 just didn't do it right. That seems to be the concept of
11 the people who live along College Street in Myerstown;
12 that they didn't have an ability, if something was
13 damaged, to get it redone in a manner that was
14 acceptable. You know, they had to pay for curbing. They
15 had to pay for the curb cuts out of their pockets; and if
16 you put a backhoe on and it cracks the sidewalk, brand-
17 spanking new that they paid for, and they paid a lot of
18 money for that, and they don't have the satisfaction of
19 having it restored to the way it was before, there is
20 some concern.

21 MR. COLONA: I don't think with those folks --
22 and again, I don't know all of the particulars about each
23 individual crack. If they go to the Department of
24 Transportation's representative on that project and say
25 that it's not done properly, if that Department of

1 Transportation person agrees with it, then it gets fixed.
2 And I'll tell you what is done, to be very frank with
3 you. We're supposed to receive pay estimates every two
4 weeks on these projects; and if things aren't done to
5 make an inspector happy, you don't get your estimate. So
6 things don't linger very long, because the inspector may
7 get two phone calls in two days from a little old lady
8 living down on the corner who's got her sidewalk cracked.
9 He's tired of hearing her call. He says either fix it or
10 you don't get your estimate, and that's what's done, and
11 it's fixed.

12 If there is one that falls through the cracks,
13 again, I can't help it; and I think every contractor is
14 guilty of one falling through the cracks. But with
15 PennDOT having a representative on every project, all
16 anyone has to do as a citizen is call that person, and
17 he's got the right, if he's not made happy, to hold up
18 your money; and when you run a payroll on one job of
19 \$40,000 a week, trust me, again, a contractor can't stand
20 to have that money held up. They'll fix it right away.

21 REPRESENTATIVE ZUG: Thank you.

22 CHAIRMAN HESS: Representative Strittmatter?

23 REPRESENTATIVE STRITTMATTER: Thank you. I
24 thank everybody for their patience and the length of time
25 here, especially you, Mr. Colona, for coming here today

1 and the people from Dublin, because I know this is
2 awfully stressful doing this, but it is very helpful to
3 us as a Committee and to the Department, who is here, to
4 try to straighten out what we are supposed to be doing.

5 I've been reading a book. It is pretty good.
6 It's called, "The Death of Common Sense," how laws are
7 suffocating America; and I think we're getting a good
8 education here about many times the intended good is far
9 outweighed by the unintended bad. The results from the
10 systems from good people trying to work within systems
11 that don't work, we end up with just terrible, very
12 expensive results.

13 If you could help us to better understand maybe
14 the relationship with the contractors with PennDOT and
15 the tough job that PennDOT has to go through. How many
16 bad plans are there would you say, an estimate? When
17 you're bidding on it and you're looking at, about how
18 many? Is it 50 percent that don't go the way they're
19 supposed to?

20 MR. COLONA: I'm trying to be as diplomatic
21 about this as I can. I think what we'll do is we'll just
22 pick three projects that we're here talking about.
23 Dublin, we built that job by the seat of our pants.
24 Thank goodness we had a very good resident inspector in
25 Rick Allison. Thank goodness that his superiors,

1 George Cook and Ron Deck, are good construction people.
2 Had they not been, that job wouldn't be half done.

3 Route 30, Villanova, we might as well have
4 taken those plans and thrown them out the window. That
5 area is an extremely densely populated area. Route 30 is
6 one of the oldest roads in the nation. We put in 8,000
7 feet of underground storm drainage. In order to put that
8 in, you've got to make sure that all the underground
9 utilities are out of the way. Well, they were supposed
10 to be out of the way. Everybody thought they were out of
11 the way. Once we started digging, you found phone lines,
12 gas lines, water lines that weren't marked on any plan.

13 To say the plans are bad, they're not prepared
14 in a bad intent. The problem that occurs -- and again,
15 this gets back to us now being in a maintenance mode of
16 construction as opposed to new construction. When you go
17 out to build a new bypass, you don't have anything to
18 worry about. You don't have to worry about finding
19 underground buried gas tanks. On the Route 30 project,
20 we were supposed to have one. We had 12. We were
21 supposed to have 60 cubic yards of contaminated dirt. We
22 had over 3,000. We had to stop the project for two weeks
23 to send everybody to school to deal with the
24 contamination. We had to go out and buy suits for
25 everybody to walk around like astronauts to be able to

1 work.

2 A lot of the plans are bad. Another job, Route
3 3070 in Coatesville, which was a bridge constructed over
4 Amtrak. Number one, having any kind of roadwork where
5 you have PennDOT, a bureaucracy, dealing with another
6 bureaucracy, Amtrak, that's like mixing oil and vinegar.
7 You're not allowed to work but between 1:00 and 5:00 in
8 the morning because of the electric that is being run.
9 You put two entities like that together, plus the job was
10 an extremely difficult job to build in that it was on a
11 severe skew. There were a lot of design problems that
12 weren't originally anticipated in the structural steel.

13 They are three projects that have been recently
14 completed. I think, to get back to the crux of your
15 question, the plans are a huge problem.

16 REPRESENTATIVE STRITTMATTER: So you'd say it's
17 100 percent?

18 MR. COLONA: I'd say we have done very few
19 jobs, very few that have gone even 90 percent by the
20 plan. On every job, you've got to expect something. On
21 a lot of the jobs today, you're finding more and more
22 problems; and I think one way, if we can make a
23 suggestion, is on the district level -- the state is
24 divided into 12 different construction districts -- on
25 the district level, to spend more time and money having

1 plans reviewed before they hit the street.

2 Right now PennDOT is becoming -- and we found
3 this even more in our area -- becoming very, very
4 cognizant of the effects it has on the people in the
5 areas they're working, and they're trying to cut down the
6 time limits. They're trying to say, "All right. This
7 job should have originally taken 400 days. Do it in 300
8 now."

9 Well, the intentions are good and the
10 contractor bids it that way, but I don't think that
11 they're doing enough homework in preparing the plans to
12 enable it to be done in that time.

13 REPRESENTATIVE STRITTMATTER: We'll have to ask
14 PennDOT, because I'm working on a Route 30 project. It's
15 a widening project. But we're spending two or three
16 years to do this planning.

17 Another question I have is you take into
18 consideration other items, circumstances, utilities. You
19 know that. Does PennDOT, do you feel, take into
20 consideration those things? When you bid a project, you
21 don't count on 365 days of sunny weather, do you? You
22 don't count on 24 hours of daylight?

23 MR. COLONA: No, sir, and neither do they.
24 When they bid a project, they give you a total number of
25 calendar days based on an eight-hour workday. They give

1 you what they've got. We usually figure about 210
2 working days to a year, to a calendar year.

3 REPRESENTATIVE STRITTMATTER: Now, your
4 relationship with the inspectors, you pay for the
5 inspectors, right, in your bid when you're calculating
6 that?

7 MR. COLONA: No, sir. The inspectors are --

8 REPRESENTATIVE STRITTMATTER: Do they calculate
9 with you the amount of inspectors that will be there to
10 take care of problems? Like, for instance, wouldn't it
11 be the inspectors -- like you said with the residents
12 that would complain to you, wouldn't they also be the
13 ones that would be in charge of making sure that Bell
14 Telephone or one of the other telephone companies or one
15 of the other gas companies would take care of the
16 problem?

17 MR. COLONA: Sir, the way the breakdown goes,
18 when you get a job -- first of all, the inspectors are
19 assigned to the project by PennDOT. When you get a job,
20 you have what you call a pre-construction meeting, at
21 which time all of the utilities, the contractor, the
22 citizens, police, anyone who wants to attend, are invited
23 to come to these meetings; and at that time, many times,
24 you just find out -- now, this is after the job has been
25 bid. This is when you're getting ready to go to work.

1 This is when you all sit down around a table and a guy
2 says, "Well, wait a minute. You're putting a pipe here.
3 We didn't know you were putting a pipe here. I've got a
4 conduit running there." And it's after the job is bid,
5 before it gets started, that you just start to find out
6 the problems that are evident to the naked eye when they
7 all sit down around the table.

8 REPRESENTATIVE STRITTMATTER: Is that why then
9 that there were -- it seems as if the relationship
10 between inspectors and workers from the previous
11 testimony was about one to one. Would you agree with
12 that, with the people from Dublin that I think said there
13 were like four inspectors on the job and you might have
14 had four to six people working on the job?

15 MR. COLONA: No. There may have been given
16 times due to the work available, due to weather, that we
17 may have a few people there. The average number of
18 people that have been on that job when we were working
19 there is nine to eleven. Presently, there are 16 or 17.

20 Again, everything has got to be looked at. If
21 all you're doing is building catch basins, three or four
22 guys suffices. It just depends on what mode of operation
23 the job is in at that time.

24 REPRESENTATIVE STRITTMATTER: Do you work in
25 other states? Does your company take bids in other

1 states?

2 MR. COLONA: We are pre-qualified in the State
3 of Delaware and Maryland. To date, we've bid some work
4 in both, but have done none there yet.

5 REPRESENTATIVE STRITTMATTER: Do you find that
6 our Department of Transportation or our legislature or
7 whatever, you know, not just picking on them, but picking
8 on us, that the other states, it's easier to work in and
9 better to get the work done? Are the plans presented
10 better? Are the inspectors helping to get the utilities
11 on line? Does it work better in other states?

12 MR. COLONA: All I can do is go off of industry
13 information that I've received, and PennDOT is no worse,
14 no better than anyone else. The one problem that PennDOT
15 has, and I must stress this especially in this time when
16 we're looking for a gas tax increase, PennDOT needs
17 money. The inspectors' in the field hands are tied.

18 As I alluded to in my statement, there are many
19 times you come upon a problem, that to do it
20 expeditiously and quickly to get it done would cost
21 \$5,000. Due to the funding restraints -- and they can't
22 make these decisions, and a lot of them are afraid to
23 make these decisions because there is no money. You may
24 end up having to think about a way to do it for \$2,500,
25 and it may take you two or three weeks to come up with a

1 way to do it that way.

2 If there was more money readily available for
3 these guys, that, "Hey, we can do it this way. We're not
4 going to lose any time. Let's do it. Let's get it done
5 quick. Let's work around the clock to fix this problem,
6 instead of having to wait for two or three weeks."

7 REPRESENTATIVE STRITTMATTER: And in the other
8 states, do they give the discretion to their on-site
9 inspectors in the other states that you work in to do
10 that?

11 MR. COLONA: I don't know about the discretion
12 to the inspectors. That's not the question. In the
13 other states, there's money.

14 REPRESENTATIVE STRITTMATTER: The other
15 question I'd have would be prevailing wage. You got into
16 that a little bit when you talked about the price of your
17 labor and the overtime. Do you also do non-state work
18 where you don't have the prevailing wage rate?

19 MR. COLONA: Ninety to 95 percent of our work
20 is prevailing wage work.

21 REPRESENTATIVE STRITTMATTER: How would you say
22 that we rank? Do we pay twice as much, three times as
23 much, because we have prevailing wage rates?

24 MR. COLONA: I'm going to be honest with you.
25 If you go to the State of Maryland, a laborer will make

1 \$9.00 to \$11.00 an hour. That same laborer here is
2 making \$30.00. In the District 6 area, which is the
3 five-county area in and around Philadelphia, that area is
4 the highest paid area in the State of Pennsylvania. A
5 laborer in that area will make \$4.00 to \$5.00 more an
6 hour than one in Lancaster County.

7 I'll give you a little example. We did a
8 bridge over a river between Lancaster County and Chester
9 County, District 8 and District 6. Everyone that worked
10 on the Lancaster County side of the job as a laborer made
11 \$5.00 an hour less than if they were on the other side of
12 the bridge working on the Chester County side. When you
13 worked on the pier in the center, we had to split their
14 time half and half.

15 That's why the competition is so fierce in our
16 area, in the District 6 area, because many contractors,
17 if you make a certain percentage on top of your bid, your
18 bid, with the labor being that much higher, they want to
19 come down there and work, because their percentage and
20 their money is going to be higher.

21 Conversely, we have a number of our skilled
22 tradespeople that drive from Shamokin, New Ringgold,
23 Johnstown, Pennsylvania.

24 REPRESENTATIVE STRITTMATTER: Well, in our
25 case, in Lancaster, we're rebuilding a road, you know,

1 just finished now, the contractor is from Georgia. The
2 283 project is coming from Georgia.

3 Well, I thank you very much, because I know
4 with the amount of time, if we could, maybe our Committee
5 staff could call upon you and the members of Dublin in
6 the future that we could follow up on this, but I know
7 that there is only so much time today to do this, but I'd
8 like to keep working on this to make sure we do this.

9 Also, if we could get a commitment from you to
10 try to work with maybe your other friendly contractors
11 there to try to do something working with PennDOT to take
12 care of this borough's problem. Maybe we can be creative
13 today and try to get other people in there that have the
14 other workers that are around that maybe you can't afford
15 to have on your staff to take care of these problems with
16 the utilities or whatever, but maybe they'd be willing to
17 pitch in and solve this borough's problem for you and for
18 the whole industry as a whole, you know, working as a
19 society through Mr. Heck's organization.

20 Thank you.

21 MR. COLONA: We would be very, very happy to do
22 anything like that, and I feel that a lot of things in
23 regards to a lot of individual projects, I can sympathize
24 with everyone on that side of the table having to answer
25 25 phone calls a day from people who are upset, and

1 rightfully so, but I think the most prudent thing to do
 2 from your standpoint is to pick up the phone, cut through
 3 all the bureaucracy, and call Primo on the phone or call
 4 Glasgow on the phone or call Morrisey on the phone and
 5 get it straight from the horse's mouth, because it keeps
 6 it, number one, out of the newspaper, because one thing
 7 as a businessman and as one whose name has been plastered
 8 all over the newspaper in Bucks County now for two
 9 months, it builds up a certain amount of animosity when
 10 you know basically that you're not doing wrong but you're
 11 perceived as doing wrong and you get no chance, other
 12 than in the newspaper, to refute that; and Primo has
 13 taken the high road, and most good contractors take the
 14 high road, in that they don't air their dirty laundry in
 15 the press. They'd rather say it face to face so that the
 16 people understand how genuine and sincere they are.

17 CHAIRMAN HESS: Thank you very much.

18 Mr. Logan, would you like to make a statement?

19 MR. LOGAN: Yes, I would. I have a very brief
 20 statement, and this is only for the purposes of inviting
 21 this Committee to look further.

22 Today's inquiry has been I think the term was a
 23 lightening rod galvanizing people's attention because of
 24 its focus upon Primo, but being a former Assistant
 25 Attorney General working with PennDOT, now working almost

FORM 2

1 exclusively with contractors in public contracting in
2 Delaware, Maryland, New Jersey, Pennsylvania, and
3 throughout the country, I would invite this Committee to
4 not be short-sighted -- and I know you won't be -- by
5 looking at the pre-qualification of PennDOT contractors.

6 I'm going to suggest that the Committee take an
7 examination of whether or not there should be pre-
8 qualification of PennDOT designers. There is none
9 presently. There is, however, in the Pennsylvania Code
10 the requirement upon PennDOT to examine what are
11 construed as design errors. To the best of my knowledge,
12 excepting maybe one time, PennDOT has never taken it upon
13 itself to investigate whether or not there were design
14 errors and to collect the money that was expended on
15 behalf of PennDOT to correct those design errors. It has
16 never happened.

17 Perhaps the Committee can take as an example
18 and maybe go back and examine the construction of the
19 Blue Route in District 6, which finished one year late,
20 tens of millions of dollars over estimate, and I would
21 dare say that not a dime was recovered from any designer
22 on account of any alleged design defect, and I don't
23 believe that there was a single liquidated damage
24 assessment which stuck. Somebody was remiss somewhere in
25 something, but no one has ever looked.

1 The second is that in addition to the
2 designers, PennDOT has no pre-qualification process for
3 those persons and entities that they retain as their eyes
4 and ears on the job site. When I worked with PennDOT, it
5 was a transition from in-house inspection staff to let's
6 go outside because economics seemed to be the better way
7 to do it. Let's hire outside consultants. No one has
8 ever examined the success, financial success, of whether
9 more dollars are spent because the eyes and ears are not
10 qualified or competent, and there is no competency test
11 for any of those persons and entities sent out there to
12 be the eyes and ears.

13 So, for example, when someone -- and I am
14 familiar with most of the projects that have been
15 mentioned today because I've been there. I'm an old
16 dirt-kicker, and I used to be an engineer, so I've been
17 out there. I know what's out there. So if someone
18 reports, "Today I saw this," maybe that person doesn't
19 know the first darn thing of what they're writing down or
20 saying; and unfortunately, the information that is then
21 promulgated to the citizenry, who have absolutely the
22 right to object, and the legislators, yourselves, who
23 have the right to call this meeting and demand an
24 explanation, it is garbled in transmission. Garbage in,
25 garbage out I've heard many, many times recently, as have

1 all of you. But no one goes back and looks at who is the
2 person who is the origin of this information, not one
3 time.

4 Finally, I need to comment about my former
5 colleagues, and I hope that they still are my colleagues,
6 at PennDOT. It is imperative that the quality of the
7 persons who work for PennDOT be maintained, and that
8 means that you're going to have to pay these people more.
9 As ridiculous as that sounds coming from me, who has been
10 denominated by some of the people within PennDOT as evil,
11 I believe that to keep the qualified, competent people
12 working for PennDOT, you have to pay them more. They
13 leave. They go to private industry. So it's not that
14 you do not have competent people working for PennDOT.
15 It's just that their experience level has diminished over
16 a period of time.

17 When you talk to the gentlemen who are about to
18 follow us, they have probably the most difficult task of
19 all. They are the gentlemen who oversee the pre-
20 qualification process for PennDOT. They need to
21 translate that which is on the written paper, that which
22 you, Representative Druce, were looking at moments ago
23 and saying, "Well, I have six reports here, and it says
24 this, that and the other thing."

25 Anyone who is an attorney knows that sometimes

1 it is not worth spending the big dollars on the lawyers
2 to fight, so maybe you swallow real hard and say, "You
3 know, I'm going to let this one go by. It's wrong, it's
4 real wrong, but I'm going to let it go by because it's
5 not worth fighting about. I don't want to spend \$50,000
6 to correct a \$2,000 or a \$4,000 or a \$10,000 error."

7 There are other sides to every one of the
8 stories that you are relating to. I know them, and some
9 of them are still pending. So what you have in front of
10 you and what the gentlemen succeeding us have in front of
11 them are evaluations, subjective at best, confidential.
12 The contractors, as you will hear, have no input into
13 what is written down about them, and they're never even
14 shown it. You can't even get it usually in the discovery
15 mode. So nobody knows the magic that is written down.
16 Nobody knows whether it's true. So if you have competent
17 people at one end with competent people -- and I know the
18 two gentlemen are behind me -- they have to rely upon the
19 information.

20 What this body has to do is give some
21 empowerment to PennDOT to do some affirmative things, pay
22 them more, and least of all, if you do nothing else, the
23 major impediment that you heard talked about today, to
24 Primo and, indeed, to many other contractors, are utility
25 companies. They occupy PennDOT highways by the grace of

1 God and something called a Highway Occupancy Permit.
2 There are teeth in those permits. The utilities
3 nevertheless thumb their nose at everyone and say, "I'll
4 get to it when I get to it and not before." Dublin
5 Borough is a good example. The Coatesville bridge is
6 another example. The Blue Route is another example.

7 The utilities must be held accountable so that
8 when questions of pre-qualification come up about a
9 contractor finishing late, there is a provision in the
10 contract that says, PennDOT says, "Contractor, it's all
11 your responsibility to coordinate and assist in moving
12 the utilities." PennDOT distances itself by language
13 saying, "We're not responsible."

14 Unfortunately, the contractor can do nothing
15 more than call utilities dirty names and say please.
16 They have no legal right to force them to move. They
17 have no legal ability to go into court and say, "Judge,
18 make them move." PennDOT may. So when examining a
19 liquidated damages situation caused by utilities failing
20 to move, PennDOT is reluctant to accede that it's their
21 fault. Contractors will never agree that it's theirs;
22 and the real culprit, the utilities, don't do anything.
23 And I can tell you that there are many roads out there
24 where paving has been around telephone poles; and since
25 I've seen many people driving off roads and hitting those

1 telephone poles, the contractor is not very well advised
2 to start working until the utility has done its job.

3 So if today is nothing more than a catalyst to
4 the next step, I would invite you all to take that next
5 step. Thank you.

6 CHAIRMAN HESS: Thank you, gentlemen, very
7 much.

8 Mr. Mustin and Mr. Peda?

9 Mr. Mustin, would anyone in your group like to
10 make any opening statements at all prior to us going to
11 some questions?

12 MR. MUSTIN: The only opening statement that I
13 would make is I would allude to the comments made by Mr.
14 Colona relative to pending litigation and potential
15 litigation on specific jobs, and we would respectfully
16 decline to answering any questions relative to specific
17 jobs, but we would be available to answer any questions
18 relative to the pre-qualification process and the
19 evaluation of contractors.

20 I don't believe that Mr. Peda or Mr. Starasinic
21 are available or have the knowledge to talk about plans
22 submitted to the Department and then ultimately to the
23 contractors, so I don't know if they're going to be
24 capable of answering any questions relative to that,
25 because that was not what we were asked to provide.

1 CHAIRMAN HESS: I understand we're going to
2 have to limit the questions to the pre-qualifications
3 because of litigation problems and legal problems that
4 might arise in the future, and we'll try to narrow it and
5 keep it in that perspective.

6 Are there any members of the Committee that
7 have any questions? Representative Zug?

8 REPRESENTATIVE ZUG: Thank you, Mr. Chairman.
9 Again, on June 16, 1994, we had a meeting in Myerstown.
10 Mr. Peda, you were invited to that. You didn't attend.
11 Mr. Hoffman, the District Engineer, did attend to talk
12 about the pre-qualifications on Primo's next job or
13 future jobs.

14 At the meeting, Mr. Hoffman, who I think is a
15 great District Engineer -- by the way, the employees of
16 PennDOT who were on that job I think did a good job. We
17 had worked with them and had worked citizens' complaints
18 through them. At the meeting, PennDOT -- I just have
19 PennDOT in my notes. My assumption is it was probably
20 Mr. Hoffman, but I don't know that for certain -- said,
21 "The evaluation of this project will be performed and
22 Primo will not receive a good evaluation," and that would
23 be furthered on to somebody at PennDOT.

24 In a letter dated July 13th to Senator
25 Brightbill, who also had representation at the meeting,

1 signed by Secretary Yerusalim -- and I'm going to read
2 this -- it says, "We appreciate receiving this
3 information concerning the performance of one of our pre-
4 qualified contractors. Our evaluation system of a
5 contractor's work performance is generally dependent upon
6 receipt of past performance reports, PPR's, from our
7 district offices.

8 "As far as the specific project in Myerstown is
9 concerned, our District 8 office has attempted to
10 expedite the work with several letters written to Primo
11 Contracting, Inc., concerning the schedule of operations
12 for this project. Primo has been notified the Department
13 may consider a default action on this project. However,
14 this is a last resort type action that would cause
15 additional delays since the contract would have to be
16 rebid or assigned to another contractor. Default action
17 could result in suspension of his pre-qualified
18 certificate.

19 "The District is completing an interim PPR for
20 Primo on this project. The rating of this project and
21 other projects in District 6-0 will be forwarded to the
22 Pre-Qualifications Office to determine further actions,
23 if any, to be taken concerning Primo's pre-qualification
24 status.

25 "As an interim action that is to be taken

1 immediately by the Department, Primo will be required to
2 submit to the Pre-Qualifications Office a work plan
3 detailing his proposed procedures to coordinate his
4 efforts with other ongoing work. The requirement will be
5 imposed on projects where Primo has submitted the
6 apparent low bid.

7 "If you need additional information concerning
8 this letter, please contact Mr. Robert Peda."

9 Now, can you talk about what happened with the
10 letter?

11 MR. PEDA: I'm Robert Peda. I really wish not
12 to talk about Primo Contracting, as reasons stated by Bob
13 Mustin earlier. We do receive performance ratings on all
14 of our contractors; if necessary, interim performance
15 ratings, which when we receive unsatisfactory ratings,
16 not only do they go into the computer to factor into a
17 contractor's ability factor, the contractor is typically
18 given a letter of concern that we are watching much
19 closer than any other contractor. So he is typically put
20 on notice in writing.

21 REPRESENTATIVE ZUG: Was that done?

22 MR. PEDA: I don't know in this case.

23 REPRESENTATIVE ZUG: Well, it seems to be that
24 the Secretary obviously says there is a problem. He says
25 there is a problem in 6-0, which is Mr. Druce's area.

1 This happened before, I might add, the Dublin project was
2 bid.

3 MR. PEDA: One thing I want to make note of is
4 we deal with contractor suspensions, disqualifications in
5 our office, and there are many reasons and many ways that
6 they can be disqualified, but in all processes, the
7 contractor has due process to go through an appeal to
8 those decisions, and many times there are a lot of
9 considerations that go into the final determination and
10 the fact of whether or not the contractor is fully at
11 fault or not.

12 REPRESENTATIVE ZUG: Well, this letter is dated
13 July 13th. I mean, we're talking 16 months, 18 months
14 since this letter.

15 MR. PEDA: We operate based on the information
16 that we receive from the field projects, and typically, a
17 performance rating is done at the end of the job. Now,
18 the first time a contractor has a poor performance rating
19 does not automatically disqualify him from all further
20 bidding. We try to work with the contractor, if
21 necessary, and try to turn things around, let him know
22 that there is deep concern and the possible consequences
23 of losing his pre-qualification.

24 I want to point out, and it was mentioned by
25 most of the people here today, that every job is on a

1 case by case. You heard about Mr. Colona stating that he
2 started out with a \$1.7 million job and how the price
3 escalated. PennDOT in its specifications, which are part
4 of the contract, have provisions for requiring the
5 contractor to do extra work, and all this extra work and
6 all of what you heard about conflicts with utilities are
7 all considered into why a project went bad; and believe
8 me, if we were to go in and disqualify any contractor
9 just with the first indication of a problem, you know, he
10 wins in an appeal, because when you go to a hearing, just
11 like we are today, you have to sort through everything
12 that happened.

13 REPRESENTATIVE ZUG: Well, obviously, the
14 Dublin thing isn't a first. I mean, we had problems in
15 Myerstown. If you read the letter, it appears that there
16 may be other problems.

17 MR. PEDA: We have followed up with this
18 contractor.

19 CHAIRMAN HESS: Mr. Zug, I think we're going a
20 little far afield here.

21 REPRESENTATIVE ZUG: Sorry, Mr. Chairman.

22 CHAIRMAN HESS: Representative Strittmatter?

23 REPRESENTATIVE STRITTMATTER: Thanks for being
24 here today.

25 MR. PEDA: Sure.

1 **REPRESENTATIVE STRITTMATTER:** Within your
2 section of PennDOT, how many apply to be pre-qualified?
3 How many contractors apply per month and per year?

4 **MR. PEDA:** We have a list of pre-qualified
5 contractors, and that includes prime contractors and
6 subcontractors, and at any one give time, there are about
7 1,100 contractors on that list. They all must be
8 recertified on an annual basis. Certainly, we receive
9 more applications, because some of them are not
10 qualified, and we reject their application for contractor
11 pre-qualification. So there may be another -- and Fred
12 probably knows this more than me -- another 100 or 200
13 more that do not get pre-qualified or are not given
14 additional work classification codes, because from the
15 information that we are required to see by the
16 regulations and what we can evaluate, we don't have proof
17 that they can do the work.

18 **REPRESENTATIVE STRITTMATTER:** How many people
19 work in your section at PennDOT?

20 **MR. PEDA:** In the Pre-Qualification Unit, we
21 have Fred Starasinic to my left, who is the Contract
22 Evaluation Engineer, and he has one assistant; and they
23 manage the entire Chapter 457 Contractor
24 Pre-Qualification Program.

25 **REPRESENTATIVE STRITTMATTER:** Do they have any

1 other responsibilities within the Department?

2 MR. PEDA: We have other work relating to
3 subcontractor approvals, changing items in the specs. We
4 work on a committee, on a Risk Allocation Committee, with
5 the Associated Pennsylvania Constructors, and we try to
6 make improvements in our specifications. We're trying to
7 deal with the utility problems right now in many other
8 areas, and they inevitably get involved in various
9 assignments in that capacity.

10 REPRESENTATIVE STRITTMATTER: So maybe one of
11 the areas that we're looking at or what I'm hearing today
12 is if the plans or the design -- if there is
13 justification by the people that they are pre-qualifying
14 or the people that they are judging later, if a large
15 proportion of those have extenuating circumstances,
16 either being utilities, being weather, or being the
17 design fault, then it's pretty tough for you, Fred, to
18 sort of judge whether it is their poor workmanship or
19 it's an act of God or it's the act of utilities or it's
20 the act of poor design, isn't it?

21 MR. STARASINIC: I think there is a distinction
22 to be made here between the designers and the
23 contractors. As Paul Logan mentioned earlier, we just
24 pre-qualify contractors. Designers do not come under
25 pre-qualification.

1 **REPRESENTATIVE STRITTMATTER:** But one of the
2 excuses that the people would have, besides weather, for
3 why they don't get the job done, extra tanks, because
4 they don't get the job done, utilities, because they
5 don't get the job done, the other thing would be the fact
6 that, well, the road really wasn't designed properly;
7 isn't that correct?

8 **MR. STARASINIC:** That is correct.

9 **REPRESENTATIVE STRITTMATTER:** So how do you
10 make a judgment if you have all these extenuating
11 circumstances and someone is coming before you and making
12 the case and you have to act as judge and jury and also
13 protect the taxpayers? How do you go about doing that?
14 Give us an idea of what your day is like.

15 **MR. STARASINIC:** Contractors who do work for
16 PennDOT should be rated on past performance reports. For
17 any given contractor, he may have one job during the past
18 year. Some traffic engineering people or control people
19 may have 100 jobs working for PennDOT. We may get a past
20 performance report for each job. We may not. We ask the
21 districts to try and do a performance report for every
22 contractor and subcontractor on the job.

23 Now, each of these reports are scored and an
24 average taken. We look at the average of the total
25 scores and we relate it to a table of ability factors

1 from 1 to 15. An assignability factor is then developed
2 from that evaluation. As mentioned earlier, the ability
3 factor only goes up by one point a year or down by one
4 point a year. Generally, if it goes down by one point a
5 year, it does raise a red flag and we're saying there
6 must be something else wrong.

7 REPRESENTATIVE STRITTMATTER: And that's one
8 point based on what, a ten-point scale or a hundred-point
9 scale?

10 MR. STARASINIC: It's from 1 to 15.

11 REPRESENTATIVE STRITTMATTER: So 1 to 15, but
12 the most that you can move in any given time is one?

13 MR. STARASINIC: One point up or one point
14 down, that is correct. Now, if a contractor has not done
15 any work for PennDOT, there are no performance reports,
16 his ability factor would remain the same from year to
17 year.

18 We have approximately 1,200 contractors'
19 applications we get a year. Not all of them do work for
20 PennDOT. There is only probably about 700 out of those
21 that are actually performing work for PennDOT that
22 actually get evaluated.

23 REPRESENTATIVE STRITTMATTER: And how many jobs
24 per month or per year are evaluated?

25 MR. STARASINIC: I really couldn't give you an

1 answer on that. I've never really taken a total of the
2 number of projects for each contractor or totaled the
3 sum. I would guess, though, that I'm looking at at least
4 -- I look at at least 100-and-some performance reports a
5 week, I would guess, on an average. One week may be 500
6 or 600, and the next week may be only 50, but I would
7 guess around there.

8 REPRESENTATIVE STRITTMATTER: I thank you very
9 much for being here today, because the job that you have
10 doing all those job performances coming in, evaluating
11 700 contractors out of 1,200 -- well, I guess another
12 question would be: How many are disapproved a year? If
13 we have 1,100 or 1,200 annually that are pre-qualified,
14 how many do you go through and have to reject a year?

15 MR. STARASINIC: Most of the disapprovals will
16 probably come with new applicants. They have to show
17 experience either in the type of work they're asking us
18 to do or they have had a superintendent that has maybe
19 done work for other firms. If they can't prove that
20 they've had previous experience in either one of those
21 areas, we will turn down their application.

22 The other option is with the contractors who
23 are doing work for PennDOT, who renew their
24 pre-qualification every year, we have taken suspension
25 action from time to time when we've had sufficient

1 information that we've received from the district offices
2 on the past performance reports.

3 REPRESENTATIVE STRITTMATTER: With the
4 disapprovals coming mostly with new applicants, about how
5 many would you suggest that is per month, per year?

6 MR. STARASINIC: With the new ones, I would
7 guess probably about one a month would be the rejection
8 for new applicants.

9 REPRESENTATIVE STRITTMATTER: And how many new
10 applicants are approved then, one out of how many?

11 MR. STARASINIC: I would say we're probably
12 approving maybe four out of five new applicants.

13 REPRESENTATIVE STRITTMATTER: So you have to
14 review about five applicants a month in addition to
15 everything else that you do?

16 MR. STARASINIC: The number of new applicants
17 have increased over the past few years. I'm not sure
18 what the reason is, but in the last four years we have
19 received a number of new applications. I would guess
20 we're averaging somewhere between 20 to 30 new applicants
21 per month.

22 REPRESENTATIVE STRITTMATTER: So in addition,
23 that's one a day -- well, more than that, because you're
24 not working 30 days out of a month. You have to review
25 that. Do you ever have any time to get out of your

1 office? Have you ever gone out and seen any of these
2 jobs? As the previous speaker said, being a dirk-kicker,
3 do you have any time to view any of these projects that
4 are being rated by you?

5 MR. STARASINIC: I do that occasionally, and I
6 would like to do it more often, but it is difficult to
7 do. We have to depend upon reference information that we
8 get back from the owners that the applicant puts in his
9 application.

10 REPRESENTATIVE STRITTMATTER: I'm really sorry
11 for the responsibility that we in the legislature threw
12 upon you and your assistant, and I really think that
13 we're getting a false sense of security, and I think it's
14 great we're having a hearing here today to see the great
15 false sense of security that I think 12 million people
16 are depending upon, because it is impossible for you and
17 an assistant to do what you just outlined here today. If
18 you get sick, God help us, so I hope that you stay well.

19 Thank you, Mr. Chairman.

20 CHAIRMAN HESS: Thank you, Jere.

21 We have a couple other people that have
22 questions. I would hope that they would limit them,
23 because we have to be out of this room by 12:00, and it
24 five till now; and the Chair would like to ask a question
25 or two himself.

1 Representative Bard?

2 REPRESENTATIVE BARD: The assigned ability
3 factor and the maximum capacity rating, that is evidently
4 not public information. Would there be any objection on
5 PennDOT's part to covering that under Right to Know or
6 Sunshine Law? I'm surprised that that's not public.

7 MR. STARASINIC: I believe that's under review
8 right now by our Office of Chief Counsel, but generally
9 speaking, in the past, we have maintained that the
10 contractor's ability factor and his financial capacity be
11 kept as confidential. We also consider past performance
12 reports as confidential.

13 Maybe John may want to comment on it; but as of
14 right now, I believe it is being reviewed by our Office
15 of Chief Counsel as to exactly what is confidential and
16 what is not.

17 MR. ROBINSON: If I may, my name is John
18 Robinson. I am the Chief Claims Attorney for PennDOT.
19 Fred is right; it is under review right now. I'm not
20 certain that that information would fall as a public
21 document under the Right to Know Act. The information
22 that is provided by contractors is generally held dear to
23 them, and they regard it as certainly their trade, if not
24 a secret, at least confidential information.

25 We express to them when they apply that that

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1 information is confidential, won't be disseminated to any
2 of their competitors or anybody else, for that matter,
3 and it is more in regard, I believe, to the industry's
4 wishes to keep that information confidential, which is
5 what we try to provide for in Fred's department.

6 REPRESENTATIVE BARD: Thank you.

7 Thank you, Mr. Chairman.

8 CHAIRMAN HESS: Representative Fairchild?

9 REPRESENTATIVE FAIRCHILD: Thank you. Just a
10 couple quick questions about pre-qualification. We've
11 heard testimony here today, and it has been an extremely
12 interesting day. We kind of went through the contractor
13 being qualified, job site problems, the frustrations that
14 develop on both the PennDOT level and contractor level,
15 but I think we've heard a pretty common theme today, and
16 that is that there are problems out there in the job, not
17 necessarily caused by PennDOT, not necessarily caused by
18 the contractor, not necessarily caused by the engineer,
19 sometimes caused by the utility companies.

20 My question is, and I think the previous
21 speaker brought up a very good point. It has been my
22 experience that there are a lot of problems with some of
23 the designs in the projects out there today. Have either
24 of you people thought of the possibility of pre-
25 qualifying the engineers that, indeed, lay the groundwork

1 for these projects, which in turn seem to be causing a
2 lot of the problems that are out there?

3 MR. PEDA: I'm a little bit out of my area.
4 The selection of consultants is in the Bureau of Design
5 and with the districts. I'm in construction. They do go
6 through a lengthy process of, first of all, finding out
7 interested consultants, and then narrowing that list down
8 and going through a double-step selection process. So if
9 a consultant is not performing well, there are certainly
10 avenues in there that the district may decide quite
11 readily to take somebody else. It's not a low bid system
12 and it's not a system that -- I don't really think it's
13 necessary that they --

14 REPRESENTATIVE FAIRCHILD: I understand, and I
15 don't want to belabor the point, but it seems like we
16 have all these formulas and criteria to keep the
17 contractor responsible and accountable. My question is:
18 do we have the same criteria to keep the engineer
19 accountable and responsible?

20 MR. PEDA: We have professional engineers
21 signing the plans, and that in itself, there is
22 credibility that goes in that seal when those plans are
23 sealed. Part of the problem is unforeseen conditions.
24 We are in a maintenance mode now. We do run into
25 hazardous materials. A lot of these things,

1 unfortunately, cannot always be readily determined during
2 design. We are dealing with a little bit different
3 scenario these days.

4 REPRESENTATIVE FAIRCHILD: Thank you.

5 CHAIRMAN HESS: Thank you, Russ. You asked one
6 of my questions. This would be directed to PennDOT.

7 How often do you do pre-qualifications on your
8 construction people? How often do you review them? Once
9 a year, once every six months, every two years?

10 MR. STARASINIC: Right now, it's approximately
11 once a year. Prime contractors, when we issue a
12 certification, it extends for 18 months from the date of
13 their balance sheet statement. For subcontractors, it is
14 exactly one year from the date of the issuance of the
15 certificate, but it all averages out to about once a
16 year.

17 CHAIRMAN HESS: This isn't a question, but more
18 of a statement. Each project has a Project Engineer on
19 them, am I correct, just working with the contractor on
20 the job on a daily basis?

21 MR. PEDA: There is a person in responsible
22 control. In some cases, one Project Manager may cover
23 multiple projects, but he visits the project on a regular
24 basis. Larger projects have a Project Manager there at
25 all times.

1 CHAIRMAN HESS: Well, to alleviate problems
2 such as these folks have here, and I'm sure there have
3 been other problems throughout the state, maybe you want
4 to take a look at giving the Project Engineer some
5 responsibility as to bringing the problems back to you
6 folks at PennDOT, saying, "We have a problem here. The
7 contractor is not at fault. We have the people here
8 complaining to me because this isn't done. It's because
9 the telephone poles weren't moved. The utility lines
10 were not put in properly," whatever it may be; act as a
11 liaison between PennDOT, the contractor, and the people
12 in the community. It seems like there is no
13 communications here. Everybody is blaming everybody
14 else, and it's not getting done.

15 MR. PEDDA: About two-and-a-half years ago, we
16 started the process called partnering. It is a voluntary
17 process, where the contractor and the Department may get
18 together at the beginning of the job or even before it
19 starts work, and identify all the stakeholders, the
20 utility people, the subcontractors, maybe some
21 fabricators, the municipality. We get together in a room
22 for a day or a day-and-a-half, two days, with an outside,
23 third-party facilitator and try to go through
24 team-building exercises to get one group with the focus
25 on completing the project together, and then we identify

1 any rocks in the road or any problems that we may
2 foresee, because the contractor may see things as he's
3 getting ready to do the construction that won't quite
4 fit. That does get to be a problem.

5 That way, this communication and teamwork is
6 working pretty good in Pennsylvania on the projects we're
7 doing it. It's usually on major highway construction
8 projects, but we will consider partnering on any job
9 where we go through this workshop and take care of
10 problems in advance. We identify who has responsibility
11 to make a decision, how long he has to make that decision
12 before he goes to his supervisor. So that is a process
13 available and it is working.

14 CHAIRMAN HESS: Well, it didn't work too well
15 on this project.

16 MR. PEDA: I'm not aware that we've had any
17 formal partnering processes on these projects.

18 CHAIRMAN HESS: I think with the Project
19 Engineer, make that a part of his responsibility as he
20 sees these problems arising, and I'm sure he does,
21 because he's there, and he sees it, and he's being talked
22 to by not only the contractor, but by the local people in
23 the community, and he can evaluate the situation. Is
24 this something that is urgent? Should this be taken care
25 of now? Should we have a meeting to decide who is at

1 fault and get it done?

2 One other question. Are there any ideas or
3 anything in the making for pre-qualifications for design
4 engineers?

5 MR. PEDA: I'm not aware of that.

6 CHAIRMAN HESS: There is no way that you
7 qualify them?

8 MR. STARASINIC: That would fall in under our
9 Bureau of Design, and as far as we know, we have no
10 knowledge that there is anything in the plans for that.
11 That is outside of our bureau, actually.

12 CHAIRMAN HESS: Okay. Thank you very much. If
13 there is nothing more, the meeting is adjourned.

14 REPRESENTATIVE DRUCE: Mr. Chairman?

15 CHAIRMAN HESS: Excuse me. Representative
16 Druce has a final statement.

17 REPRESENTATIVE DRUCE: Thank you, Mr. Chairman.
18 Again, I want to thank the members of the Committee for
19 their time this morning.

20 I don't want to ask the Department any
21 questions, because I've had the opportunity and I guess
22 to some extent the advantage of having met with you and
23 others on many occasions to try to better understand this
24 process. While this Committee is focused on this issue
25 and I believe additional issues, which Representative

1 Fairchild addressed, as it relates to design -- and as an
2 aside, I do believe design became an issue in Dublin,
3 which is my district -- but now is the time to put those
4 things on the table; and if the Department has
5 suggestions or recommendations from itself or in
6 cooperation with the industry, get those to the
7 Committee, because I think a compelling case has been
8 made to make some changes, but the window is here now,
9 and let's not lose the opportunity to do that.

10 I would strongly urge, following my question I
11 asked the industry folks, my satisfaction will come from
12 seeing the Department recognize time for what it is, and
13 it's not money. I think today what we learned is time is
14 people's lives, and these aren't contracts you're
15 letting; they are communities you're letting; and you
16 need to think about that. And when you put it in that
17 context, then try to do everything you can to make
18 yourself as responsible for the job as if you were
19 bidding something in your own house, because that's who
20 you are. You are responsible for the job, not the
21 contractor. The Department is the one that shows up at
22 those meetings that we have locally and gets drilled by
23 everybody, so give yourselves the teeth to be able to
24 deal with that situation; and I leave the open window for
25 you to give us the things that we need to give to you to

1 empower you, which is what I think you need.

2 I make one comment directed, I guess, towards
3 the industry and maybe even specifically to the
4 contractor in this case, because I can understand to some
5 degree points that were made here. The only point I also
6 would make, though, is communication is a two-way street,
7 and I have been to probably more meetings than I care to
8 be in Dublin; and I say that not because I don't like
9 Dublin, but because it has been under the unfortunate
10 circumstances that I've gotten to meet all these good
11 people. But they've had more meetings than they probably
12 wanted to have with Tom Druce, and I don't recall at any
13 one of those meetings having somebody from a company
14 there to give their side of the story; and I say that in
15 a constructive way, because it has been very frustrating
16 at meetings that we have often left feeling that we
17 didn't get the answers we wanted; and if someone were
18 there, whoever that magic someone is -- and it oftentimes
19 isn't the Department. It's the person doing the work out
20 in the field -- who could tell where the problem is,
21 folks like myself and our Senators and others in the area
22 could move on those issues.

23 There are ways for us to help you expedite the
24 problem and help the contractor -- and I guess that
25 remark is not to you, but so much to the industry -- to

1 become part of the local meetings, be there, and don't
2 sit back and say, "Let's not do this in the press." It
3 only gets to the press because they're never in
4 attendance at any other time in which we have an
5 opportunity to confront them and deal with them other
6 than the setting today.

7 Finally, let me just thank the people from
8 Dublin for coming here this morning, and just maybe leave
9 with the members who are here on this Committee, because
10 I think they all realize that they're probably all very
11 glad that you're not from their legislative districts,
12 but I still underscore the fact that any one of these
13 folks sitting here today could be, and I think their
14 sincere hope and the reason why they came here today and
15 took time away from their businesses is so that nobody
16 else goes through what they went through; and I think it
17 is our obligation as a Committee to make sure we produce
18 some document or some legislation that shows we cared
19 about the effort they made today to make the changes to
20 see that this doesn't happen anywhere else in
21 Pennsylvania.

22 Thank you, Mr. Chairman.

23 CHAIRMAN HESS: Thank you, Representative
24 Druce.

25 I'd like to mention also Representative Tim

1 Hennessy wasn't able to be with us today. He had another
2 commitment, but he has submitted his testimony for the
3 record; and Tim is from Coatesville in Chester County.

4 If there is nothing further, the meeting is
5 adjourned.

6 (Whereupon, at 12:05 p.m., the hearing was
7 adjourned.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken
stenographically by me, and thereafter reduced to
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FORM 2

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