

STATE OF LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

NUMBER 631910 SECTION

**SEC. 26**

19<sup>TH</sup> JUDICIAL DISTRICT COURT

VS

PARISH OF EAST BATON ROUGE

JOHNSON BROS. CORP. OF LA., AND ITS SURETY BERKLEY REGIONAL INSURANCE COMPANY

STATE OF LOUISIANA

\*\*\*\*\*

**PETITION FOR FORFEITURE OF PROPOSAL/BID BOND GUARANTEE**

NOW INTO COURT through undersigned counsel comes plaintiff, the State of Louisiana thru the Louisiana Department of Transportation and Development, appearing herein to file its petition for forfeiture of the bid bond guarantee of defendant Johnson Brothers Corporation of Louisiana, and who with respect to this honorable court shows:

FILED  
EAST BATON ROUGE PARISH, LA  
2008 JUN 30 AM 9:17  
CLERK OF COURT

1.

Plaintiff THE STATE OF LOUISIANA THRU THE LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT (hereinafter LADOTD) has its principal offices and headquarters at 1201 Capitol Access Road, Baton Rouge, Louisiana, 70802.

2.

Made defendant herein is JOHNSON BROTHERS CORPORATION OF LOUISIANA, a non-Louisiana business corporation who may be served at its registered office in Louisiana, 3867 Plaza Tower Drive, 1<sup>st</sup> floor, Baton Rouge, LA, 70816.

3.

Made defendant herein is BERKLEY REGIONAL INSURANCE COMPANY, an insurance company incorporated in the State of Delaware which may be served through the Louisiana Secretary of State as the designated agent for service of process on all foreign insurance companies doing business in Louisiana under the provisions of LSA-R.S. 13:3472 and LSA-R.S. 22:335.

4.

In accordance with §102 of the *2006 Louisiana Standard Specifications for Roads and Bridges* (hereinafter "Louisiana Standard Specifications" or "Standard Specifications") the defendant Johnson Brothers Corporation of Louisiana (hereinafter "Johnson Brothers" or "Johnson Brothers Corp.") submitted a bid for State Project H.002926.6, the Sunshine Bridge Pier 4 & 5 fender repair, let on May 30, 2012.

5.

As let, Johnson Brothers' bid was declared the lowest responsive bid in amount of \$2,563,032.10.

6.

In accordance with the terms under which Johnson Brothers submitted the bid for State Project H.002926.6, the bid included a proposal/bid bond guarantee #SLA12642625 [Exhibit #1] in amount not less than 5% of the total bid amount, executed by Laura D. Mosholder on May 21, 2012 on behalf of the "primary agency" Nielson, Wojtowicz, Neu & Associates; the surety being defendant Berkley Regional Insurance Company.

7.

In Correspondence dated July 13, 2012 [Exhibit #2] Johnson Brothers' President Walter Johnson notified the LADOTD that it had made quote: "*several significant clerical errors in calculating our bid price*" (see paragraph 2 of Exhibit #2) and requested that it be allowed to withdraw the bid and that its bid bond be returned under the provisions of §102.12 of the *Louisiana Standard Specifications for Roads and Bridges*.

8.

The appropriate section of the *Louisiana Standard Specifications*, §102.13 WITHDRAWAL OF BIDS DUE TO MISTAKE, states:

(a) CRITERIA:

- (1) WITHDRAWAL OF BID: The Department may allow a bidder to withdraw a bid after the scheduled time of bid opening in accordance with state law upon a determination that:
  - a. A mistake was in fact made in preparation of the bid; and,
  - b. The mistake in the bid is of a mechanical, clerical or mathematical nature and not one of bad judgment, careless inspection of the work site, or in reading the plans and specifications; and,

- c. The mistake is found to be in good faith and was not deliberate or by reason of gross negligence; and,
- d. The mistake is patently obvious on the face of the bid; and
- e. The notice of the mistake, request for withdrawal of the bid by reason of the mistake, and written evidence of the mistake, is delivered to the DOTD Chief Engineer within 72 hours after the bid opening, excluding Saturdays, Sundays, and legal holidays. The written evidence of the mistake supplied to the DOTD Chief Engineer shall be duly sworn before a Notary Public as original, unaltered documents used in the preparation of the bid or any other facts relevant to the bidders request to withdraw the bid as evidence of the existence of a mistake; and,
- f. The sworn, written evidence furnished to the DOTD Chief Engineer within 72 hours of the bid opening, excluding Saturdays, Sundays, and legal holidays, constitutes clear and convincing evidence of the bidder's mistake.

**9.**

By affidavit the defendant Johnson Brothers asserted that it had submitted the bid at issue containing "*a patently obvious unintentional omission of a substantial quantity of work, labor, material or services in the compilation of its bid.*" [Exhibit #3; AFFIDAVIT OF WALTER D. JOHNSON; June 1, 2012]

**10.**

At paragraph 3 of the above referenced affidavit, Mr. Johnson, the stated President and authorized agent of Johnson Brothers Corporation stated:

"Upon review of its bid after the bid opening, Johnson discovered that it had unintentionally misstated the number of hours attributable to certain diver activities necessary for the Project. A total error comprising 55 days of diver work at \$7,000 per day was made. This led to an error in computation of \$385,000.00. This omission was a material and significant omission of a dollar amount related to a substantial quantity of the materials required to be supplied to the project."

**11.**

At paragraph 4 of the June 1 affidavit, Johnson stated:

"Attached to this Affidavit is original objective documentary evidence in regard to the forgoing drawn from the inspection of the original work papers, documents and materials used in the preparation of the bid. The attached documents reflect in pertinent part the erroneous figures utilized by Johnson in preparing its bid, as follows:

- (a) Page 1, Item 1000A, divers to be utilized for removal of fenders: 5 days was supposed to be 20 days
- (b) Page 3, Item 5000A, divers to be utilized to install treated timber; 20 days was supposed to be 40 days
- (c) Page 3, Item 6000A, divers to be utilized for cleaning piers 4 & 5: 5 days was supposed to be 15 days

(d) Page 3, Item 6000B, divers to perform field verification work: 5 days was supposed to be 15 days

12.

In further explanation of this series of errors, at paragraph 5 of the June 1 affidavit, [Exhibit #3] Walter Johnson stated:

“The forgoing described clerical errors regarding the numbers of days for particular diver activities occurred as follows. On May 30, 2012, and during the preparation of its bid for the Project, Johnson was involved in preparing several millions of dollars in additional bids for several other projects (a bridge project in Dallas for which the bid was also due on May 30, 2012, and three additional projects in Treasure Island, Florida, Gainesville, Florida, and Long Key Bridge in Florida, for which bids were due on May 31, 2012. During the course of the preparations of the various bids, including the bid for the Project, the undersigned engaged in a VOIP voice conference with the individual in Louisiana in charge of preparing the bid for the Project for Johnson, Zvonko Juric, whereupon Mr. Juric and Mr. Johnson agreed to increase the number of days by 55 days and Mr. Juric was to instruct the estimator, Joe Rizzo, regarding the increase so the proper numbers of days (as described above) to be attributed to the divers for the particular activities described above would be entered into the estimate for the bid. Mr. Juric has personally since informed me orally that he simply failed to properly inform Mr. Rizzo to incorporate the proper information in the Johnson bid for the project.”

13.

The defendant Johnson Brothers supplied a second affidavit dated June 5, 2012 [Exhibit #4] in which it asserted yet another error claimed to be patently obvious: to wit, it claimed in paragraph 5 of that second affidavit that:

“Subsequent to the expiration of the 72 hour time period and additional error was discovered. During the final moments of the bid preparation Wayne Baumgartner, the company asset manager inadvertently instructed the estimator Joe Rizzo to cut the equipment number in the cost estimate by \$50,000 more than the correct amount. This occurred when depreciation for the equipment included in the estimate was removed from the total. An instruction to cut \$70,000 from the bid was given and it should have been a cut of \$20,000.”

14.

By certified correspondence dated June 22, 2012 [Exhibit #5] and again, in certified correspondence of July 24, 2012, [Exhibit #6] LADOTD Chief engineer Richard Savoie informed Johnson Brothers that its request to withdraw the bid under the provisions of §102.13 of the *Louisiana Standard Specifications* had not been adequately supported and was denied.

**15.**

On August 3, 2012 LADOTD mailed Johnson Brothers the "Award of Contract" correspondence regarding State Project H002926 [Exhibit #7] with project documents and contract executables.

**16.**

In response, on August 17, 2012 [Exhibit #8] Johnson Brothers informed the LADOTD that it would contest any attempt to require performance of the contract for the Sunshine Bridge pier repair project and likewise, any attempt to collect under the proposal/bid bond guarantee.

**17.**

By correspondence dated August 21, 2012 [Exhibit 9] Janice P. Williams for DOTD Chief Engineer Richard Savoie notified Johnson Brothers that due to its failure to timely execute the contract for the Sunshine Bridge Project the award of the project had been cancelled and demand was therefore made for forfeiture of the proposal/bid bond guarantee accompanying the bid.

**18.**

By correspondence dated September 12, 2012 [Exhibit 10] DOTD Chief Engineer Richard Savoie notified Berkley Regional Insurance Company that Johnson Brothers had failed to timely execute the contract for the Sunshine Bridge Pier Project and as such, the award of the project had been cancelled and demand was made for the forfeiture of the proposal/bid bond guarantee accompanying the bid.

**19.**

The explanations and descriptions of the bid-errors offered in the correspondence and the two affidavits by Johnson Brothers plainly indicates that the bid does not contain clerical or mathematical errors but rather errors of judgment, and constitutes an attempt to withdraw the bid which Johnson Brothers subsequently determined to be disadvantageous.

**20.**

The company president claims in the June 1 affidavit that he, Johnson "...agreed to increase the number of days by 55 days". However the absence of that "agreement" in the written bid can hardly be cited as the evidence for its supposed existence.

21.

The statement in Johnson's affidavit of June 5<sup>th</sup> 2012 [Exhibit #4, paragraph 5] that: "*During the final moments of its bid preparation...*" Johnson Brothers cut \$70,000 from its bid attributable to depreciation for equipment but "*...it should have been a cut of \$20,000.*" is likewise merely a self-serving declaration, though even if true, Defendant admits this was not noticed by Johnson until after the applicable 72 hour grace period and so is immaterial to the claim.

22.

Likewise, Mr. Johnson's claim [see Exhibit #3, paragraph 5] that he was concurrently "*involved in preparing several millions of dollars in additional bids for several other projects*" does not make the alleged error 'clerical'. Further, it contradicts Johnson's affidavit testimony in which Johnson attributes the mistakes to a Mr. Zvonko Juric whom Johnson claims orally admitted to failing, in his turn, to pass the instructions on to a Mr. Rizzo to make the bid changes. Noticeably, neither Mr. Juric nor Mr. Rizzo provide testimony by affidavit, making Mr. Johnson's claims regarding their actions or inactions hearsay.

23.

Additionally, alleging a "*bust in the spreadsheet proof*" regarding "*costs for equipment ownership over the estimated term of a project*" and simply making the claim that "*Cost of anchor bolts was erroneously omitted in the amount of \$70,000*" [Exhibit 2, pg. 2] is simply the defendant self-referencing its own subjective claim of error, but even if true, would indicate an overall cumulative lack of precision in the bid preparation rather than any discreet clerical or mathematical errors.

24.

Defendant Johnson Brothers' construction accountant/CPA's report attempting to identify and detail the alleged clerical or mathematical errors [Exhibit #11] only serves to demonstrate that the purported mistakes are not "*patently obvious on the face of the bid*" as required by the provisions of *Louisiana Standard Specifications, §102.13(a)(1)d*.

25.

The Johnson Brother's CPA's report states, under *Equipment Costs*:

I've noted several errors in the equipment spreadsheet that was used outside of your HCSS bidding system. In your bidding process, this schedule is intended to correct equipment rates from the HCSS estimated rates in favor of the actual costs of ownership in your accounting system. On this bid, the spreadsheet computed a deduction from your direct costs. This amount (plus markups) was deducted from your direct costs in your bid calculation. I've noted the following errors in this spreadsheet:

a. Because of a formula error, this spreadsheet reversed 100% of ownership costs on this project for all equipment owned by Johnson Bros. The operating costs for this equipment is included in various work codes on the project, but the ownership (depreciation) for this equipment was zeroed out in error.

b. Because of another formula error, the costs of several pieces of leased equipment was also zeroed out. This included a leased generator, compressor, vibratory hammer, and a skiff.

c. These omissions resulted in a \$70,000 cost credit being applied to your bid. This amount was applied to your bid in computing the *Indirect Cost* markup to the bid, rather than only one segment of the contract. As noted above, it's obvious that a mistake was made, but it requires a little digging to find this mistake.

26.

The above quoted statements from the Johnson Brothers' CPA concern only one series of mistakes alleged to be "*obvious on the face of the bid.*" The CPA goes on to identify numerous other mistakes which would necessarily need to be obvious on the face of the bid, but which are not, as for instance, "*a labor credit of \$60,000 applied against the indirect costs on the bid*".

27.

It is respectfully stated that the plaintiff's own CPA's report confutes any assertion that the alleged errors were obvious on the bid's face. They are an accountant's subtleties.

28.

Thus the defendant's failure to execute and return the contract to the LADOTD within the time allowed as per §103.06 of the *Standard Specifications*, and its failure to meet the requirements stated in §102.13 of the *Standard Specifications* for withdrawal of the bid, entitles LADOTD to the proceeds of the bid bond guarantee of five percent of the amount bid, as per § 103.07 of the *Standard Specifications*; that 5% being equal to \$128,151.61.

29.

Defendants are liable solidarily for the full performance of the principal obligor Johnson Brothers Corporation, without benefit of division or discussion.

Plaintiff prays for a trial by jury, the threshold amount established under La. C.C.P. Articles 1731 & 1732 having been met and exceeded.

WHEREFORE, plaintiff the State of Louisiana through the Louisiana Department of Transportation and Development prays that the defendants be duly served with a certified copy of this petition, together with Citation to appear and answer same, and that after all legal delays have elapsed and due proceedings have been had, this Honorable Court render judgment in favor of Plaintiff, The State of Louisiana through the Louisiana Department of Transportation and Development, and against defendants Johnson Brothers Corporation of Louisiana, and its surety, Berkley Regional Insurance Company, in amount of \$128,151.61 as required in the premise, together with costs of court and any general and equitable relief allowed by law.

RESPECTFULLY SUBMITTED:

DEPARTMENT OF TRANSPORTATION &  
DEVELOPMENT  
STATE OF LOUISIANA



**JOHN H. AYRES, III** (#21228)  
1201 Capitol Access Road, Room N-337  
Baton Rouge, LA 70802  
P.O. Box 94245  
Baton Rouge, LA 70804  
Telephone: (225) 242-4612  
Fax: (225) 379-1983

**PLEASE SERVE:**

**JOHNSON BROTHERS CORPORATION OF LOUISIANA,**  
Through its Registered Agent:  
National Corporate Research, LTD.  
3867 Plaza Tower Drive, 1<sup>st</sup> floor,  
Baton Rouge, LA, 70816.

**BERKLEY REGIONAL INSURANCE COMPANY,**  
Through the Louisiana Secretary of State,  
8585 Archives Ave., Baton Rouge, LA 70809.



Contracting Agency as specified in the project proposal - Masood Rasoulian, P.E.

**Bond Number: SLA12642625**

**Contractor Information**

**Principal:** Johnson Bros. Corporation of Louisiana 813-685-5101  
**Address:** PO Box 588 Lithia Florida 33547 United States  
**Contractor's State Vendor ID Number:** 14964000

**Owner/Obligee Information**

**Bond Form:** Bid Bond in accordance with Contract Specifications  
**Owner / Obligee:** Contracting Agency as specified in the project proposal  
**Address:** P.O. Box 94245 Baton Rouge Louisiana 70804 United States

**Bond Information**

**Surety:** Berkley Regional Insurance Company  
**Amount of Bid Security:** five percent of the amount bid  
**Contract ID Number:** H.002926.6  
**Description of Job:** Sunshine Bridge

[View AMBest Information](#)   [Treasury List](#)

**Primary Agency:**

Nielson, Wojtowicz, Nel & Associates  
 Power of Attorney Limited to: \$20,000,000  
 Executed

**Executed By:**

Laura D. Mesholder - 5/21/2012 9:30:17 AM ET  
 Phone: 800-965-9597  
 Email: cknoke@nieisonbones.com

Know all men by these presents that Berkley Regional Insurance Company, a Corporation duly organized under the laws of the State of Delaware, are held and firmly bound unto the above owner/obligee by this transmission. The surety agrees to waive the Statute of Fraud defense and further agrees that the owner/obligee is a third party beneficiary of the waiver for the purposes of enforcing this bid bond.

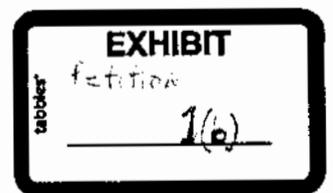




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Document ID S2000-1000677406





Corporation of Louisiana

2400 Veterans Blvd., Suite 145  
New Orleans, LA 70062  
504-305-5741

July 13, 2012

Mr. Timothy Strohschein  
LA DOTD  
P.O. box 94245  
Baton Rouge, Louisiana 70804-9245

VIA E-MAIL

Re: Sunshine Bridge Pier 4 & 5 Fender Repair. SPN H.002925.6 – St. James Parish

Dear Mr. Strohschein:

Thank you for allowing us the opportunity and additional time to further support that our bid on the Sunshine Bridge Fender Repair Project, on its face reflects the commission of significant unintentional and clerical errors.

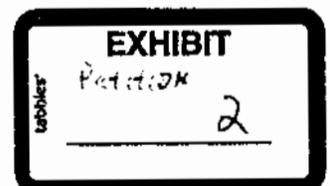
We have completed a detailed review of our bid tabulations and the underlying assumptions and calculations used in calculating our bid. It is our determination that we have made several significant clerical errors in calculating our bid price. If we were given the opportunity to correct these errors, our bid price for this project would be substantially higher than our proposal submitted to the DOTD. We believe that performing the work on this project at the price included in our bid would cause significant losses and damages to our company.

We have documented clerical errors which would have increased our bid price by at least \$630,000. These items are summarized below and would have been assigned to, and become a part of:

Line Number 0001 Removal of Fender System (approx.. \$250,000) and;  
Line Number 0005 Treated Timber (Land and Fresh Water) (approx.. \$380,000).

We feel strongly they satisfy the patently obvious requirement and all other requirements of Section 102.12 of the LA Standard Specs for Roads and Bridges for granting permission to withdraw our bid. Because of the limited number of bid items, a first impression might leave one thinking the errors are not clear on the face of the bid. Further analysis provides understanding there is a serious omission clearly on the face of the bid.

Our analysis starts with where the errors occurred and why. The errors were as follows:



<u>Bid Component</u>	<u>Omission</u>
Equipment Omitted	\$ 70,000
Labor Credit Error	60,000
Diver Crew Error	385,000
Anchor Bolt Error	70,000
Total	<u>\$585,000</u>
Mark up	<u>\$45,000</u>
Total	<u>\$630,000</u>

The reason for each error follows:

Our standard practice in assigning equipment costs to a project includes the recognition of our actual costs for equipment ownership over the estimated term of a project. These actual costs are readily traceable in our books as charges to the project over its term. The equipment cost clerical error made in estimating this project was due to a bust in the spreadsheet proof. This bust resulted in an understatement of these costs and, when entered into our formula for bid price, equated to approximately \$70,000 in bid cost understatement.

A labor credit adjustment below Davis Bacon rates was erroneously included for \$60,000. A cost credit for offsite work was not appropriate for this project and was included in error.

We inadvertently omitted, through clerical error, 55 crew days of diver time that was intended to be reflected through adjustment to the project costs. At \$7,000 per day that clerical error amounted to omission \$385,000 cost.

Cost of anchor bolts was erroneously omitted in the amount of \$70,000.

Our profit markup was 9.4% of bid price. Had the costs that were erroneously left out of the cost estimate been included our estimated profit would have been higher by \$45,000.

Next in our analysis was how these errors impacted the bid prices on the face of the bid. First in terms of the total bid our bid patently reflected a serious error

- Our bid was over \$800,000 (or 24%) lower than the second bidder
- Our bid was over \$1.6 million (or 39%) lower than the third bidder.
- Our bid was over \$1.6 million (39%) lower than the average bid price of the top 5 bidders.

Second in terms of individual bid items affected by the clerical errors despite the very few bid items our bid showed a serious difference on two bid items:

- Line item 1 Removal of Fender System was 31% of the second bidder and 21% of the average.
- Line item 5 Treated Timber was the largest bid item and our bid was 77% of the second bidder and 66% of the top 5 average or more than \$435,000 lower than the second bidder and \$729,000 lower than the top 5 average.

Attached please find Slide 1 through 7 that supports our analysis.



In addition to our own analysis, we have asked our independent auditor, Whit Forehand of DGLF, to audit the HCSS libraries and formulas and spreadsheet proofs leading to the final compilation of our cost estimate and ultimate bid price. We have attached Whit's report which confirms the existence of the above referenced inadvertent clerical errors.

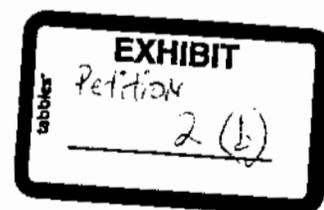
Our process of compiling our cost estimate included an extensive review of the bid documents, an extensive and thorough site investigation by several members of our estimating team, and an effort from our estimating staff of over 75 hours. We were looking forward to performing this Project and working with DOTD once again. We are extremely disappointed to have discovered these significant errors which were committed in the very final stages of our bid preparation after incurring sunk costs of over \$15,000 in the bidding process of this project.

It is with much regret and disappointment, we must request pursuant to Section 102.12 of the LA Standard Specs for Road and Bridges that we be allowed to withdraw our bid and ask for the return of our bid bond. We very much look forward to working with you on future projects and to once again earn the confidence the DOTD has placed in Johnson Bros.

Respectfully,



Walt Johnson, President  
Johnson Bros. Corporation of Louisiana  
407-529-5886



COUNTY OF DALLAS

STATE OF TEXAS

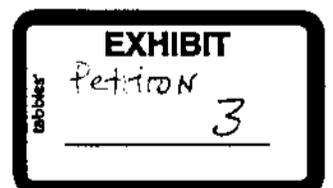
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**AFFIDAVIT OF WALTER D. JOHNSON**  
**AFFIRMING EVIDENCE OF**  
**UNINTENTIONAL OMISSION FROM**  
**LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT BID**

Lead Project: H.002926  
Parish: St. James  
Routes: LA 70  
Description: Sunshine Bridge Pier 4 & 5 Fender Repair  
Type of construction: Fender repair and related work  
Estimated construction cost: \$4,428,322.00

BEFORE ME, the undersigned Notary, came Walter D. Johnson, President and authorized agent of Johnson Bros. Corporation of Louisiana ("Johnson"), who, under oath, stated as follows from his personal knowledge:

1. Johnson submitted a bid on May 30, 2012, for the Louisiana Department of Transportation and Development project known as Sunshine Bridge Pier 4 & 5 Fender Repair, located in St. James Parish, Louisiana ("the Project").
2. After Johnson's bid was opened, Johnson realized that it had made a patently obvious unintentional omission of a substantial quantity of work, labor, material or services in the compilation of its bid.
3. Upon review of its bid after the bid opening, Johnson discovered that it had unintentionally misstated the number of hours attributable to certain diver activities necessary for the Project. A total error comprising 55 days of diver work at \$7000 per day was made. This led to an error in computation of \$385,000.00. This omission was a material and significant omission of a dollar amount related to a substantial quantity of the materials required to be supplied to the Project.



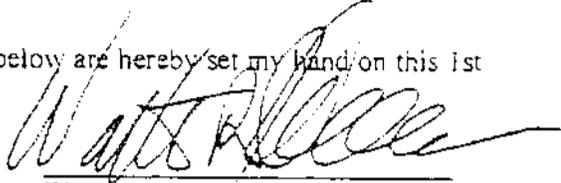
4. Attached to this Affidavit is original objective documentary evidence in regard to the foregoing drawn from the inspection of the original work papers, documents and materials used in preparation of the bid. The attached documents reflect in pertinent part the erroneous figures utilized by Johnson in preparing its bid, as follows:
- (a) Page 1, Item 1000A, divers to be utilized for removal of fenders: 5 days was supposed to be 20 days
  - (b) Page 3, Item 5000A, divers to be utilized to install treated timber: 20 days was supposed to be 40 days
  - (c) Page 3, Item 6000A, divers to be utilized for cleaning piers 4 & 5: 5 days was supposed to be 15 days
  - (d) Page 3, Item 6000B, divers to perform field verification work: 5 days was supposed to be 15 days
5. The foregoing described clerical errors regarding the numbers of days for particular diver activities occurred as follows. On May 30, 2012, and during the preparation of its bid for the Project, Johnson was involved in preparing several millions of dollars in additional bids for several other projects (a bridge project in Dallas for which the bid was also due on May 30, 2012, and three additional projects in Treasure Island, Florida, Gainesville, Florida, and Long Key Bridge in Florida, for which the bids were due on May 31, 2012). During the course of the preparations of the various bids, including the bid for the Project, the undersigned engaged in a VOIP voice conference with the individual in Louisiana in charge of preparing the bid for the Project for Johnson, Zvonko Juric, whereupon Mr. Juric and Johnson agreed to increase the number of diver days by 55 days and Mr. Juric was to instruct the estimator, Joe Rizzo, regarding the increase so the proper numbers of days (as described above) to be attributed to the divers for the particular activities described above would be entered into the estimate for the bid. Mr. Juric has personally since informed me orally that he simply failed to properly inform Mr. Rizzo to incorporate the proper information in the Johnson bid for the Project.
6. As described above, this unintentional obvious omission was due to the mechanical, clerical and/or mathematical error by Johnson in the compilation of its bid for the Project.



7. Based upon the above-described patently obvious unintentional mistake concerning the correct hours for the particular diver activities associated with the Project, Johnson requests that its bid be withdrawn. in accordance with DOTD procedures and the law.

FURTHER AFFIANT SAYETH NOT.

Being duly sworn and witnessed by the Notary below are hereby set my hand on this 1st day of June, 2012.



Walter D. Johnson  
President  
Johnson Bros. Corporation of  
Louisiana

Before me appeared Walter D. Johnson, a resident of Celebration, Florida, and, who, under oath, swears the above statement to be true, correct and complete.

Notary Public:

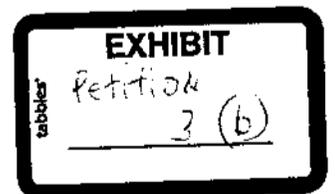
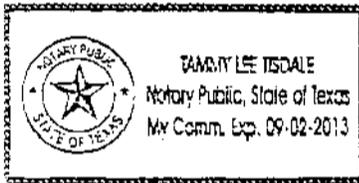


Title (and rank)

Notary

My commission expires:

9/2/2013



COUNTY OF ORANGE

STATE OF FLORIDA

#2

**SECOND AFFIDAVIT OF WALTER D. JOHNSON**  
**AFFIRMING EVIDENCE OF**  
**UNINTENTIONAL OMISSION FROM**  
**LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT BID**

Lead Project: H.002926

Parish: St. James

Routes: LA 70

Description: Sunshine Bridge Pier 4 & 5 Fender Repair

Type of construction: Fender repair and related work

Estimated construction cost: \$4,428,322.00

BEFORE ME, the undersigned Notary, came Walter D. Johnson, President and authorized agent of Johnson Bros. Corporation of Louisiana ("Johnson"), who, under oath, stated as follows from his personal knowledge:

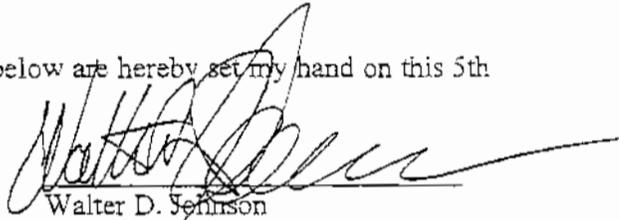
1. Johnson submitted a bid on May 30, 2012, for the Louisiana Department of Transportation and Development project known as Sunshine Bridge Pier 4 & 5 Fender Repair, located in St. James Parish, Louisiana ("the Project").
2. After Johnson's bid was opened, Johnson realized that it had made a patently obvious unintentional omission of a substantial quantity of work, labor, material or services in the compilation of its bid.
3. Upon review of its bid after the bid opening, Johnson discovered that it had unintentionally misstated the number of hours attributable to certain diver activities necessary for the Project. A total error comprising 55 days of diver work at \$7000 per day was made. This led to an error in computation of \$385,000.00. This omission was a material and significant omission of a dollar amount related to a substantial quantity of the materials required to be supplied to the Project.



4. An Affidavit was submitted by Walt Johnson in support thereof.
5. Subsequent to the expiration of the 72 hour time period an additional error was discovered. During the final moments of the bid preparation Wayne Baumgartner, the company asset manager inadvertently instructed the estimator Joe Rizzo to cut the equipment number in the cost estimate by \$50,000 more than the correct amount. This occurred when depreciation for the equipment included in the estimate was removed from the total. An instruction to cut \$70,000 from the bid was given and it should have been a cut of \$20,000.
6. As described above, this unintentional obvious omission was due to the mechanical, clerical and/or mathematical error by Johnson in the compilation of its bid for the Project.
7. Based upon the above-described patently obvious unintentional mistake, in addition to the previous diver hour mistake set forth in Johnson's prior affidavit, concerning the correct equipment adjustment associated with the Project, Johnson requests that its bid be withdrawn, in accordance with DOTD procedures and the law.

FURTHER AFFLIANT SAYETH NOT.

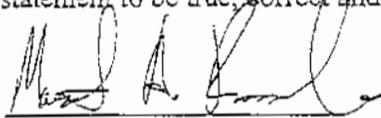
Being duly sworn and witnessed by the Notary below are hereby set my hand on this 5th day of June, 2012.



Walter D. Johnson  
 President  
 Johnson Bros. Corporation of  
 Louisiana

Before me appeared Walter D. Johnson, a resident of Celebration, Florida, and, who, under oath, swears the above statement to be true, correct and complete.

Notary Public

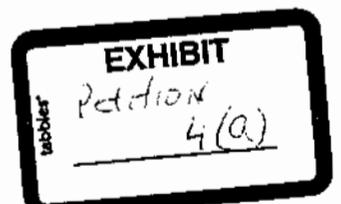
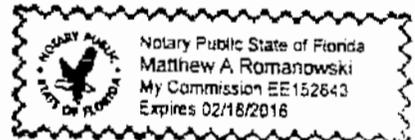


Title (and rank)

\_\_\_\_\_

My commission expires:

2/18/2016





BOBBY JINDAL  
GOVERNOR

STATE OF LOUISIANA  
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
P.O. Box 94245  
Baton Rouge, Louisiana 70804-9245  
www.dotd.la.gov  
225-379-1234



SHERRIL LEBAS, P.E.  
SECRETARY

June 22, 2012

CERTIFIED MAIL  
NO. 70020460000258224208  
RETURN RECEIPT REQUESTED

Mr. Walt Johnson, President  
Johnson Brothers Corporation  
2462 West Sand Lake Road  
Orlando, FL 32809

**RE: Sunshine Bridge Pier 4 & 5 Fender Repair**  
**SPN H.002926.6 - St. James Parish**

Dear Mr. Johnson:

I am writing in regard to your recent request for withdrawal of your bid on the above referenced project. After careful consideration, it has been determined that the request for withdrawal does not meet the requirements of Section 102.13 of the Louisiana Standard Specifications for Roads and Bridges, and therefore is denied.

DOTD intends to move forward with this project, and will contact you regarding the contract soon. Thank you for your assistance and cooperation.

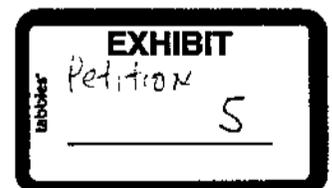
Sincerely,

Richard L. Savoie, P.E.  
DOTD Chief Engineer

RLS:jmb

c: Mr. Masood Rasoulian  
Mr. Paul Fossier  
Mr. Kurt Brauner  
Mr. James Bookter

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BOBBY JINDAL  
GOVERNOR

STATE OF LOUISIANA  
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
P.O. Box 94245  
Baton Rouge, Louisiana 70804-9245  
www.dotd.la.gov  
225-379-1234



SHERP H. LEGAS, P.E.  
SECRETARY

July 24, 2012

CERTIFIED MAIL  
NO. 7012 1010 0002 6849 2485  
RETURN RECEIPT REQUESTED

Mr. Walt Johnson, President  
Johnson Brothers Corporation  
2462 West Sand Lake Road  
Orlando, FL 32809

RE: Sunshine Bridge Pier 4 & 5 Fender Repair  
SPN H.002926.6 - St. James Parish

Dear Mr. Johnson:

Upon re-consideration of the request by Johnson Brothers Corporation to withdraw its bid in the above referenced project, I have determined, and the Secretary has affirmed, that the additional information presented at the hearing on July 20, 2012, is unpersuasive, and therefore, Johnson Brothers' request does not meet the requirements of Section 102.13 of the Louisiana Standard Specifications for Roads and Bridges. Accordingly, Johnson Brothers' request to withdraw its bid due to mistake, is denied.

In order to move ahead with the project, DOTD will promptly forward the contract documents for your signature. Thank you for your assistance and cooperation.

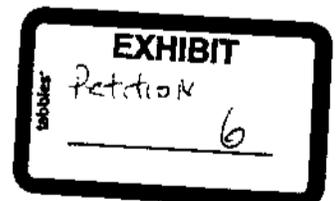
With best regards,

Richard L. Savoie, P.E.  
DOTD Chief Engineer

RLS:jmb

- c Mr. Joe Bloise
- ✓ Mr. Masood Rasoulian
- Mr. Paul Fossier
- Mr. Kurt Brauner
- Mr. James Bookter

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02/01/2011





BOBBY JINDAL  
GOVERNOR

STATE OF LOUISIANA  
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
P.O. Box 94245  
Baton Rouge, Louisiana 70804-9245  
www.dotd.la.gov  
(225) 379-1446  
1201 Capitol Access Road, Baton Rouge, LA 70802



SHERRI H. LEBAS, P.E.  
SECRETARY

August 3, 2012

STATE PROJECT NO. H.002926  
FEDERAL AID PROJECT NO. H002926  
CONTROL SECTION NO. 426-02  
SUNSHINE BRIDGE PIER 4 AND PIER 5 FENDER REPAIRS  
ROUTE: LA 70  
ST. JAMES PARISH

Johnson Bros. Corporation of Louisiana  
5476 Lithia Pinecrest Road  
Lithia, FL 33547

SUBJECT: AWARD OF CONTRACT  
Letting of May 30, 2012

Gentlemen:

You have been awarded the contract for the captioned project in the amount of \$2,563,032.10.  
Enclosed are two specification packages for your use, and the following:

**CONTRACT EXECUTABLES**

- Two (2) original contracts (Including Performance, Payment and Retainage Bonds)
- Corporate resolution or power of attorney
- A signatonal authorization form
- Contract receipt/acknowledgement form:

**PROJECT DOCUMENTS**

- Construction Progress Schedule
- Request to Subic: (Form OMF-1A and 2A)

Have the contract executables completed by the representative of your firm indicated in the Corporate Resolution or Power of Attorney, witnessed as indicated, and returned to the Project Control Section of DOTD, cubicle 405 KK, 1201 Capitol Access Road, Baton Rouge, LA 70802, attention Pamela LeCoq within fifteen days of this letter. The contract bonds included within the contract must additionally be properly executed by an authorized representative of the surety company in accordance with LSA R.S. 48:255 and must be accompanied by an original or certified copy of the bondsman's power of attorney.

Return with the executed contract, all documentation necessary to verify project specific insurance coverages as required in the Special Provision, Subsection 107.02. As stated, a separate Owner's and Contractor's Protective (OCP) Liability Policy shall be supplied by the contractor naming the Louisiana Department of Transportation and Development as the named insured. If the contracting agency is other than LADOTD then the required OCP Policy shall be issued, naming the contracting agency and the Louisiana DOTD as the named insured.



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02 53 2010

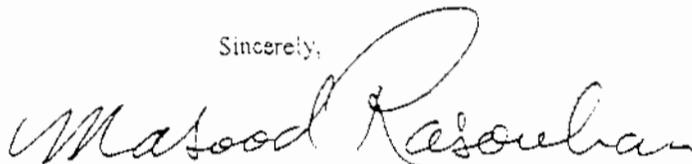
State Project No. E.002946  
August 3, 2012  
Page 2

The Construction Progress Schedule is to be forwarded to the Project Engineer's office in accordance with section 108.03 of the current edition of the Louisiana Standard Specifications. The copy of the Request to Sublet form is for your use to seek Department approval if you request to sublet any portion of the work.

It is the Department's intention to issue a Notice to Proceed or, if so stated in the contract, a Conditional Notice to Proceed no later than thirty calendar days following Departmental execution of the contract. In no case will the Notice to Proceed extend beyond sixty days without mutual written consent of both the contractor and the Department. Specific requests to adjust the issuance date of the Notice to Proceed must be processed through the Project Engineer, Mr. Aaron Elisar prior to its issuance.

If there are any questions, please contact Pamela LeCoq at (225) 379-1446.

Sincerely,



MASOOD RASOULIAN, P.E.  
PROJECT CONTROL ADMINISTRATOR

MR. PSL

Enclosures

cc: FHWA

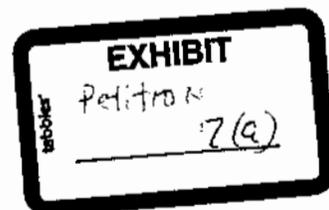
State Licensing Board for Contractors

Mr. Brian Buckel

Mr. Ray Schmid

Ms. Rachael Woods, OFCCP

Mr. Aaron Elisar





5476 Lithia Pinecrest Road  
Lithia, FL 33547  
August 17, 2012

By Email to Richard Savoie and Masood Rasoulian  
Fed Ex to Addressee

State of Louisiana  
Department of Transportation and Development  
Project Control Section of DOTD, Cubicle 405 KK  
P.O. Box 94245  
1201 Capitol Access Road, Baton Rouge, LA 70802  
Baton Rouge, Louisiana 70802

Attn: Masood Rasoulian, Project Control Admin

In Re: State Project No. H.002926  
Federal Aid Project No. H002926  
Control Section No. 426-02  
Sunshine Bridge Pier 4 and Pier 5 Fender Repairs  
Route: La 70  
St. James Parish

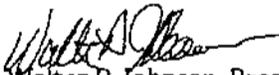
Gentlemen:

We hereby acknowledge receipt of your letter dated August 3, 2012, subject: Award of Contract, Letting of May 30, 2012 and its attachments and Mr Savoie's letter of July 24, 2012 giving notice of the decision to deny the Johnson Bros. Corporation of Louisiana petition for relief due to mistake on the above referenced bid.

Johnson Bros. Corporation of Louisiana takes issue with your determination and gives notice of its intent to contest any and all further attempts on the part of the DOTD to force Johnson Bros. to either perform the contract or DOTD's attempts to collect under the bid bond. Johnson Bros. appearance before the DOTD on two occasions has more than adequately satisfied the demonstration of a mistake in its bid, entitling it to withdraw the bid in accordance with the law.

We trust you understand our position on this.

Sincerely,

  
Walter D. Johnson, President





BOBBY JINDAL  
GOVERNOR

STATE OF LOUISIANA  
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
P.O. Box 94245  
Baton Rouge, Louisiana 70804-9245  
www.dotd.la.gov  
225-379-1234



SHERRI H. LEBAS, P.E.  
SECRETARY

August 21, 2012

Mr. Walt Johnson, President  
Johnson Bros. Corporation  
2462 West Sand Lake Road  
Orlando, FL 32809

CERTIFIED MAIL  
NO. 70010320000138967144  
RETURN RECEIPT REQUESTED

**RE: Sunshine Bridge Pier 4 & 5 Fender Repair  
SPN H.002926.6, St. James Parish**

Greetings:

I am writing to notify you that Johnson Bros. Corporation has failed to timely execute the contract for the above referenced project. As a result, pursuant to Section 103.07 of the Louisiana Standard Specifications for Roads and Bridges, such failure constitutes cause for cancellation of the award and forfeiture of the proposal/bid guarantee (bid bond). Therefore, DOTD hereby makes a formal demand for the amount of the bid bond contained in this project.

If you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your attention to this matter.

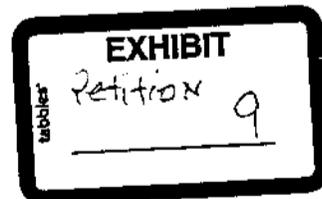
Sincerely,

*Richard L. Savoie*  
Richard L. Savoie, P.E.  
DOTD Chief Engineer

RLS:jmb

- cc: Nielson, Wojtowicz, Neu & Associates
- Mr. Joe Bloise
- Mr. Masood Rasoulian
- Mr. Paul Fossier
- Mr. Kurt Brauner
- Mr. Timothy Strohschein

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BOBBY JINDAL  
GOVERNOR

STATE OF LOUISIANA  
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
P.O. Box 94245  
Baton Rouge, Louisiana 70804-9245  
www.dotd.la.gov



SHERRI H. LEBAS, P.E.  
SECRETARY

September 12, 2012

Berkley Regional Insurance Company  
11201 Douglas Avenue  
Urbandale, LA 50322

RECEIVED  
SEP 17 2012  
B.A. TO...

CERTIFIED MAIL  
NO. 7012 1010 0002 6849 2508  
RETURN RECEIPT REQUESTED

RE: State Project Number: H.002926.6, St. James Parish, Louisiana  
Johnson Bros. Corporation bid for Sunshine Bridge fender repair

Greetings:

I am writing to notify you that Johnson Bros. Corporation has failed to timely execute the contract for the above referenced project. As a result, pursuant to Section 103.07 of the Louisiana Standard Specifications for Roads and Bridges, such failure constitutes cause for cancellation of the award and forfeiture of the proposal/bid guarantee (bid bond). Amicable demand has been made on Johnson Bros., but to no avail. Therefore; DOTD hereby makes a formal demand on Berkley Regional Insurance Company as surety for Johnson Bros., for payment in the amount of One Hundred Twenty Eight Thousand One Hundred Fifty One and 61/100 Dollars (\$128,151.61), which constitutes the amount of the bid bond for this project.

If you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your attention to this matter.

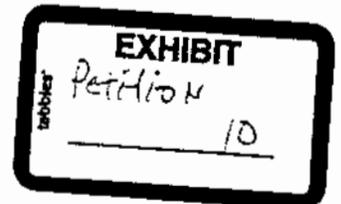
Sincerely,

Richard L. Savoie, P.E.  
DOTD Chief Engineer

RLS:jmb

- c: Johnson Bros. Corporation
- Masood Rasoulia
- Paul Fossier
- Kurt Brauner
- Timothy Strohschein

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02 53 2010



June 29, 2012

Mr. Walter D. Johnson  
Johnson Bros. Corporation  
2462 West Sand Lake Road  
Orlando, FL 32809

RE: Analysis of Sunshine Bridge Pier Bid LaDOT Project #H.002926.6

Dear Walt:

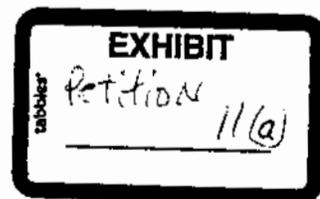
At your request, I have made a quick analysis of the bid which was submitted to the Louisiana DOT on May 30<sup>th</sup> for the Sunshine Bridge pier repair project. As you are aware, I'm not an engineer, so my analysis is limited to a construction accountant's view of things. Also, because of the very tight time constraints you need to respond back to LaDOT, I've only been available to work on this for a few hours today. I've listed my findings below.

1. *First Impressions* – As your auditor, it's obvious to me that a mistake has been made. Your overall bid is 39% below the average bid and 24% below the second lowest bidder. This job has an unusually low number of work items, so it's difficult to isolate the errors without doing at least a little digging. However, by looking at your bid tabulations, it's clear that something is wrong in several of the work areas:
  - a. Removal of Fender System – Your bid is 48% below the next lowest bidder and is 79% below the average of the other five bidders.
  - b. Structural Metalwork – Your bid is 43% below the next lowest bidder and is 60% below the average of the other five bidders.
  - c. Although your bid for Construction Layout is also significantly lower than the other bidders, I've not concentrated on this area in my analysis because it is only one or two percent of the overall price for you and the other bidding contractors
2. *Equipment Costs* – I've noted several errors in the equipment spreadsheet that was used outside of your HCSS bidding system. In your bidding process, this schedule is intended to correct equipment rates from the HCSS estimated rates in favor of the actual costs of ownership in your



accounting system. On this bid, the spreadsheet computed a deduction from your direct costs. This amount (plus markups) was deducted from your direct costs in your bid calculation. I've noted the following errors in this spreadsheet:

- a. Because of a formula error, this spreadsheet reversed 100% of ownership costs on this project for all equipment owned by Johnson Bros. The operating cost for this equipment is included in various work codes on the project, but the ownership (depreciation) for this equipment was zeroed out in error.
  - b. Because of another formula error, the cost of several pieces of leased equipment was also zeroed out. This included a leased generator, compressor, vibratory hammer, and a skiff.
  - c. These omissions resulted in a \$70,000 cost credit being applied to your bid. This amount was applied to your bid in computing the *Indirect Cost* markup to the bid, rather than as a specific line item to the bid. Because of this, the clerical error was spread across all bid items, rather than only one segment of the contract. As noted above, it's obvious that a mistake was made, but it requires a little digging to find this mistake.
3. *Labor Credit* – In addition to the equipment credit, I've noted a labor credit of \$60,000 that was also applied against the indirect costs on the bid. I'm unable to find any support for this credit. Overall, your indirect cost markups on this contract were less than 4% of direct costs. On a typical Johnson Bros. job, the indirect costs average around 20% of direct costs. It's clear to me that the indirect costs were understated on this bid.
  4. *Removal of Fender System* – It appears that a mistake has been made in calculating the number of days that divers are required on the job. Your bid includes five days for divers to remove the existing fenders and twenty days for divers to install the new fenders. For a job of this duration (13 months), this was an extremely low estimate. I understand from your team that approximately 80 days will be needed for the divers, rather than the 25 included in your bid. The 55 additional days for the divers at the \$7,000 rate included in your bid, results in an understatement of your estimated costs of \$385,000. In addition, it appears that the \$7,000 daily rate may be low, as the supplier's quote did not include consumables such as small tools and oxygen tanks.
  5. *Structural Metalwork* – In your bid, you have only included the costs of the raw materials in this bid item without any costs for assembly or installation of these materials. I have noted that there are costs for assembly and



installation of structural items included in the timber line item of your bid. I recommend that you re-examine the labor items in your bid to be sure that you have not missed the costs of assembling the metal structures.

Also, it appears that your bid may not include all of the anchor bolts that would be required to assemble the metal work and the timber. I recommend you analyze this further to ascertain whether this item was missed in your bid.

6. *Timber* – I've taken a quick look at the timber costs used in your bid, although this line item isn't one of your significant bid cost differences. I've traced your bid item to the supplier's quote and I have discussed this item with your bid team. It appears that you have a savings in this area that was included in your bid. I have not found any errors in this area, provided that the supplier is able to deliver at the price that was quoted.

Please note that the amounts above do not include apportioned indirect costs, add-ons, or markups.

I hope these items help in your analysis and I'm willing to discuss these matters with you or the Louisiana DOT as needed.

Sincerely,



Whitley B. Forehand, CPA  
DGLF CPAs and Business Advisors

