

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
J.C. Equipment Corporation ) ASBCA No. 51321  
)  
Under Contract No. N62474-81-C-A805 )

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OPINION BY ADMINISTRATIVE JUDGE ELMORE

On 28 August 1997 the Board issued an entitlement decision sustaining 19 of 44 J.C. Equipment Corporation's claims (*J.C. Equipment Corporation*, ASBCA No. 42879, 97-2 BCA ¶ 29,197). The parties were unable to reach settlement and on 3 April 1998 J.C. Equipment Corporation filed with this Board its "COMPLAINT AS TO QUANTUM" averring entitlement to an equitable adjustment (EA) of \$289,969.08, plus interest, costs and attorney fees and time extensions; and contending that "the issuance of the stop work order and termination of the contract was erroneous and must be converted into a termination for the convenience of the Government" (Bd. corr. file). Familiarity with the Board's entitlement decision is presumed.<sup>1</sup>

FINDINGS OF FACT

GENERAL

1. J.C. Equipment Corporation (JC or appellant) was awarded Contract No. N62474-81-C-A805 on 16 August 1984 to furnish all labor, materials and equipment required to "REPAIR FRESH WATER SYSTEMS (RC53-83) AND REPAIR FRESH WATER TANK (R56-84), NAVAL AIR STATION, NORTH ISLAND, SAN DIEGO, CALIFORNIA" at a contract price of \$623,078. (E-finding 1)

2. The contract included or incorporated by reference the following Defense Acquisition Regulation (DAR) clauses (E-finding 2; E-R4, tab 150): CHANGES (1968 FEB); MODIFICATION PROPOSAL - PRICE BREAKDOWN (1968 APR); INTEREST (1983 FEB); TIME EXTENSIONS (1965 JAN); WORK OUTSIDE REGULAR HOURS (6-72) and COST ACCOUNTING STANDARDS (1978 MAY).

3. MODIFICATION PROPOSALS - PRICE BREAKDOWN (1968 APR) provided (E-R4, tab 150):

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification thereof shall also be furnished. The proposal together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer. (DAR 7-602.36)

4. TIME EXTENSIONS (1965 JAN) provided (*id.*):

Notwithstanding any other provisions of this contract it is mutually understood that the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages pursuant to the new completion schedule. (DAR 7-603.36)

5. WORK OUTSIDE REGULAR HOURS (6-72) provided (*id.*):

If the Contractor desires to carry on work outside regular hours or on Saturdays, Sundays, or holidays, he shall submit application to the Officer in Charge of Construction,

but shall allow ample time to enable satisfactory arrangements to be made by the Government for inspecting the work in progress. At night, he shall light the different parts of the work in an approved manner. All utility cutovers shall be made after normal working hours or on weekends. Anticipated costs shall be included in the bid.

6. The contract's LABOR STANDARDS PROVISIONS (CONSTRUCTION CONTRACT), dated 28 June 1983, informed bidders that DAVIS-BACON ACT (DBA) (40 U.S.C. 276a to a-7) and CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (CWHSSA) (40 U.S.C. 327-333) were applicable. The DBA provided in pertinent part that all laborers and mechanics would be paid the appropriate wage rate and fringe benefits listed on the wage determination for the classification of work actually performed. If a laborer or mechanic performed work in more than one classification they were to be compensated for the actual time worked at the specified wage rate for each classification. The DBA required "the employer's payroll records accurately set forth the time spent in each classification in which work is performed." The CWHSSA in pertinent part provided that laborers and mechanics would be paid overtime pay at a rate not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek. (*Id.*)

7. DAR, Section XV (15), paragraphs 109, 202, 203 and 402.4 stated, in pertinent part, the following:

15-109 Definitions . . . .

. . . .

(f) *Direct Cost* - Any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material and labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final costs objectives of the contractor are direct costs of those objectives.

. . . .

(i) *Indirect Cost* - Any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

15-202 Direct Cost.

(a) A direct cost is any cost which can be identified specifically with a particular final cost objective. (See 15-109(f).) No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly thereto. Costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives and are charged to the contract directly or indirectly.  
...

#### 15-203 Indirect Costs.

(a) An indirect cost (see 15-109(i)) is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. . . . After direct costs have been determined and charged directly to the contract or other work as appropriate, indirect costs are those remaining to be allocated to the several cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective.

....

15-402.4 *Job Site Expenses*. Costs incurred at the job site incident to the performance of the work, such as the cost of superintendence, time-keeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as a direct charge.

8. Mr. Carl Bybee, JC's project manager, was designated by Mr. Jack Butler, JC's President, as "fully authorized . . . to negotiate mod[ifications] and submit invoices under this contract" (tr. 1/59; E-tr. 3/96).

9. Ms. Celia Butler, JC's vice president, home office bookkeeper, secretary, and accountant testified she "did not prepare or participate in the preparation of most of the [proposed change orders (PCO)] that appear here [; they] were done analytically by Jack Butler and Carl Bybee who were at the project on the site doing the work" and "Celia Butler

personally would only have the expert word of Carl Bybee and Jack Butler” to rely on. Ms. and Mr. Butler collaborated in the preparation of the quantum claim by assembling, organizing and collating the information contained in the PCOs prepared and submitted by Mr. Bybee, as well as from the Government’s and JC’s daily reports, supplemental files and exhibits.<sup>2</sup> Ms. Butler further testified she was at the North Island Naval Air Station, San Diego, not more than 35 days in 1985 and 8 days in 1986; she never performed nor witnessed a tie-in being made; and she did not consider dates in the PCO’s change order description as the dates when the changed work was performed. (Tr. 1/100-01, 103, 117, 248, 258-59, 2/16, 49-50, 60, 73, 88, 90, 197-98; E-tr. 4/150, 159)

10. Ms. Butler testified: JC’s work week went from Wednesday through Tuesday; its PCOs include 10 percent mark-up for field overhead and 3 percent mark-up for home office overhead; salaried employees were charged as a direct field cost if they spent time in the field or if they performed tasks which were not within their identified work classification; JC paid its laborers straight time for Saturday and Sunday work but billed the Navy at an overtime rate; Messrs. Butler and Bybee were paid “overtime” for Saturday and Sunday work or when they worked additional hours due to changes; JC paid overtime to its employees when he/she worked more than 8 hours a day or 40 hours a week; Mr. Bybee often worked as operator of the machinery and was billed to the job as either an operator or supervisor but not both; and JC did not have an accounting procedure that addressed double billing. Neither the Government nor JC audited the contract and JC did not proffer its accounting books/records for the contract. (Tr. 1/68-71, 207-08, 212-14, 219-22, 227-29, 231-33, 242-44, 2/41-42, 44-48, 179-80, 194-95)

11. The Board’s quantum decision is based, in part, on:

(a) -- the Board’s comparison of JC’s claimed material used for changed work with, where available, the Government’s acknowledgment of material used. The Board also compared the material costs claimed by JC with that acknowledged by the Government and find JC’s costs to be in line with the agreed-to costs for the same or similar items reached during negotiations for bilaterally executed modifications.

(b) -- a comparison of the equipment JC claimed it used to accomplish changed work with, where available, the Government’s acknowledgment of equipment used. We find that Mr. Bybee and the CO had agreed to either itemize the equipment costs or allocate 5 or 10 percent of the labor costs to cover equipment costs except for the backhoe which the parties agreed would be charged at a unit rate of \$21.70 (tr. 3/60-61; SR4, tab 45 *passim*). The Board having no way of determining the cost of equipment which is not itemized, allocates a flat 10 percent of the labor man-hours (M/Hs) for laborers and operator (when not a supervisor), *i.e.*, \$13.85 and \$17.29 per M/H respectively. However, where the equipment is itemized we will use the itemized costs.

(c) -- a comparison of the unit costs for labor reported in bilaterally executed modifications with JC's claimed labor costs which were found to conform. We accept JC's M/Hs or unit labor costs and fringe benefit costs except for the direct cost claimed for supervisor which we determined was not recoverable (*see* findings 13-15 and Discussion *infra*). We allow time and a half for weekend work as agreed to by the Government (see claim 4 *infra*). Where appropriate the Board will include the labor M/Hs for laborers and operator (when not a supervisor) when computing the 13 percent of labor mark-up for liability and compensation insurance and social security and unemployment insurance as stated on the Government's estimate for change order form submitted by the contractor.

### APPLICABLE LEGAL PRECEDENT

It is black letter law appellant has the burden of proving its affirmative claim against the Government by a preponderance of the evidence. *J.C. Equipment Corporation*, ASBCA No. 42879, 97-2 BCA ¶ 29,197, *citing Capitol Services, Inc.*, ASBCA Nos. 40510, 40511, 91-1 BCA ¶ 23,310 at 16,907; *Planning and Human Systems, Inc.*, ASBCA No. 29725, 90-2 BCA ¶ 22,821 at 114,596. When a matter is brought before the Board the parties start with a clean slate and the proceedings proceed *de novo*. *TPI International Airways, Inc.*, ASBCA No. 46462, 96-2 BCA ¶ 28,373, *recon. denied*, 96-2 BCA ¶ 28,602, *aff'd*, 135 F.3d 776 (Fed. Cir. 1998) (table), *cert. denied*, 525 U.S. 874 (1998). On appeal the whole subject of the CO's decision is before the Board, including those elements favorable to appellant, and the Board is not bound by the concessions or stipulations by either party that are contrary to the evidence or the law. *Wilner v. United States*, 24 F.3d 1397, 1401-02 (Fed. Cir. 1994); *General Atronics Corporation*, ASBCA No. 37923, 91-3 BCA ¶ 24,047, *citing Monroe Garment Co. v. United States*, 203 Ct. Cl. 324 (1973); *Kaminer Construction Corp. v. United States*, 203 Ct. Cl. 182, 488 F.2d 980 (1973). Once entitlement is established, to be entitled to recovery, the contractor seeking an EA has the added burden of proving the amount of the increased cost with reasonable certainty, and the causal connection between the particular costs allegedly incurred and the claim event. *DWS, Inc., Debtor-in-Possession*, ASBCA No. 29744, 90-3 BCA ¶ 23,026 at 115,615, *citing Celesco Industries, Inc.*, ASBCA No. 22251, 79-1 BCA ¶ 13,604; *R.W. Contracting, Inc.*, ASBCA No. 24627, 84-2 BCA ¶ 17,302 (citations omitted).

### PRELIMINARY DETERMINATIONS<sup>3</sup>

#### EVIDENTARY WEIGHT GIVEN TO MS. BUTLER'S TESTIMONY/SUMMARIES

12. Ms. Butler, JC's primary witness at the quantum hearing, testified she was at the contract site a total of 35 days in 1985 and 8 days in 1986; she neither performed nor witnessed a tie-in being made; she did not participate in the preparation of the PCOs; and her summaries were produced from the "expert word" of Messrs. Butler and Bybee, as stated on/in the PCOs (finding 9 *supra*).

## DISCUSSION

In accordance with Ms. Butler's testimony the better witness to testify to what transpired at the site was Mr. Butler. Accordingly, to the extent Mr. Butler gave relevant testimony on quantum, this testimony, as a more accurate accounting of the circumstances surrounding the changes and the issuance of the PCOs, will be given greater weight.

Addressing Ms. Butler's testimony and her summaries of Mr. Bybee's PCO submittals, we find that except for those areas where she was directly involved as vice-president, home office bookkeeper, and/or accountant, her testimony and summaries were opinions based on supposition and speculation. We have consistently held that generalized conclusory, unsupported opinion testimony neither demands weight nor constitutes proof or evidence. *Harvey Honore Construction Co., Inc.*, ASBCA No. 47087, 94-3 BCA ¶ 27,190 at 135,509 and cases cited therein; *AGH Industries, Inc.*, ASBCA Nos. 27960, 31150, 89-2 BCA ¶ 21,637. Ms. Butler's testimony and/or summaries will be accorded little evidentiary weight when based on Mr. Bybee's submittals or where Mr. Butler testified on the issue.

### CLAIM FOR REIMBURSEMENT OF SALARIED EMPLOYEE'S COMPENSATION

13. JC's certified payrolls listed salaried employees by name and title but neither recorded the compensation paid, nor apportioned a salaried employee's compensation (tr. 1/227-28). JC's PCOs claimed the hourly compensation paid to a salaried employee who worked on change orders as a direct job labor cost which it characterized as overtime or the incurred cost for performing changed work (tr. 1/74-77; ex. A-1).

14. JC's PCOs recorded a 10 percent and 3 percent mark-up for field overhead and home office overhead respectively (tr. 2/41-42; finding 10 *supra*). JC contends that during contract performance it experienced a large number of changed site conditions that resulted in salaried employees<sup>4</sup> working additional hours; that at times salaried employee performed supervisory duties and at the same time worked as laborers or mechanics; that salaried employees who spent 100 percent of their time at the project site were designated as a field overhead cost; and if a salaried employee worked on changed work it was overtime and the time spent on the change would be claimed as a direct job cost on the PCO (finding 10 *supra*; tr. 1/221-33). JC contends the remuneration paid to a salaried employee for performing changed work was not included in either the 10 percent field overhead or the 3 percent home office overhead mark-ups (tr. 2/44).

15. Ms. Butler testified that supervisors on all PCOs were paid \$20.00 per hour, "a rate that was set on February 12, 1985 [with the AROICC] that would be used on all proposed change orders" (tr. 1/207-10, 212-13, 221-23, 226, 232-33, 2/6-7). The Government's Assistant Resident Officer in Charge of Construction (AROICC) for contract

A-805, LCDR Snook,<sup>5</sup> testified that when negotiating PCOs with Mr. Bybee the direct labor charge for a salaried employee was deleted because this cost was considered an overhead expense included in JC's home office overhead mark-up (tr. 3/60-61). The Government contends JC's claim for additional compensation for its salaried employees is not recoverable as a direct job cost inasmuch as these costs were recovered as an indirect overhead expense under JC's 10 percent field overhead or its 3 percent home office allocation.

### DISCUSSION

Salaried employees' compensation is normally charged to overhead. *The Hicks Corporation*, ASBCA No. 10760, 66-1 BCA ¶ 5469 at 25,619-620. Since JC's PCOs requested reimbursement of a portion of its salaried employees' salaries as a direct job cost for changed work, it bears the burden of proving the alleged incurred additional salary costs resulted directly from the changed work. *Id.*; *J.C. Equipment Corp.*, *supra*. We are unable to establish that any such additional salary costs were incurred. The certified payroll neither indicated a salaried employee was being paid an amount over and above their salary nor did JC inscribe on the certified payroll records that a salaried employee was working as a mechanic or laborer and, therefore, entitled to additional compensation as required in the labor standard provisions of the contract (findings 6, 13 *supra*). Further, JC did not provide other documentation, *i.e.*, financial records, audit reports, or corporate payroll records, from which the Board could find that salaried employees were paid additional compensation.

Assuming, *arguendo*, we accept JC's contention it paid additional compensation to salaried employees when performing change order work, the claim would still fail. DAR 15-203 provides that "[n]o final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective" (finding 7). Accepting JC's contention that supervisor's salaries, when performing change order work, were field overhead costs, we must conclude the salaries were allocated as indirect field overhead costs, *i.e.*, costs which are not directly identified with a single cost objective. JC having charged a 10 percent field overhead mark-up, which includes indirect field overhead, cannot also charge part of a salaried employee's salary as a direct cost.

JC's claim for reimbursement of the salaries of its salaried employees who worked on changed work will be disallowed when JC also allocates to the same changed work a 10 percent field and/or 3 percent home office overhead costs.

### TERMINATION FOR CONVENIENCE AND ATTORNEY FEES

16. JC, in its quantum complaint, requested the Board find "the issuance of the stop work order and termination of the contract by the Respondent was erroneous and must be

converted into a termination for the convenience of the Government” (Bd. corr. file). JC further requested it be awarded attorney fees.

DISCUSSION

We have consistently held that under the Contract Disputes Act, 41 U.S.C. § 601 *et seq.* (CDA), the Board has jurisdiction to decide only those appeals taken from a decision of the contracting officer (CO) or from the failure of the CO to issue a decision. *L&M Thomas Concrete Co., Inc.*, ASBCA Nos. 49198, 49615, 98-1 BCA ¶ 29,560, *citing Hibbitts Construction Company*, ASBCA No. 35224, 88-1 BCA ¶ 20,505. We have reviewed JC’s original entitlement claim, the CO’s original final decision, JC’s original appeal of the final decision, and the Board’s entitlement decision and can find no reference to a termination and/or request that a termination be converted to a termination for the Government’s convenience. There being no CO’s decision, or an appeal from the CO’s failure to issue a decision, addressing a termination of JC’s contract, the Board lacks jurisdiction over this issue and this portion of JC’s quantum claim is dismissed.

We have held that pending resolution of the quantum, attorney fees requests are premature. *Engineering Technology Consultants, S.A.*, ASBCA Nos. 44237, 47867, 97-1 BCA ¶ 28,624.

4.<sup>6</sup> OVERTIME WORK ON 2/1/86 AND 2/2/86

FINDINGS OF FACT

17. On 5 February 1986 Mr. Bybee submitted PCO 110 requesting an EA of \$1,086.69 and two calendar days time extension<sup>7</sup> for “Change Order for Overtime for Saturday & Sunday, 2/1/86-2/2/86, on Area 4 and Quentin Roosevelt” (E-finding 53; ex. A-1). The work performed at Area 4 and Quentin Roosevelt was part of the new water system being installed and JC performed work on Saturday and Sunday, 1 and 2 February 1986. Mr. Bybee’s BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (ex. A-1.):

BREAKDOWN ESTIMATE OF DIRECT COSTS			
ITEM OF WORK	NO. OF UNITS	LABOR	
		UNIT COST	TOTAL COST
Labor	50	\$6.93	\$346.50
Operator	20	8.65	173.00
Supervision	20	10.00	<u>200.00</u>
TOTAL			\$719.50

ESTIMATE FOR CHANGE ORDER
PRIME CONTRACTOR’S WORK

ITEM	COST	
LABOR	\$719.50	
FIELD OVERHEAD (10% of subtotal)	71.95	
LIABILITY & COMPENSATION INS. (13% of labor cost)	93.54	
SUBTOTAL		\$884.99
HOME OFFICE OVERHEAD (3% of subtotal)	26.55	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	93.54	
SUBTOTAL		\$1,005.08

SUMMARY		
PRIME CONTRACTOR'S WORK	\$1,005.08	
PRIME CONTRACTOR'S PROFIT 6%	60.30	
SUBTOTAL		\$1,065.38
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	21.31	
TOTAL COST		\$1,086.69

Request for two (2) additional calendar days

18. In its Daily Report to Inspector (DRI) JC reported that on 1 February 1986 1 project manager and 1 superintendent each worked 8½ hours, and 2 laborers worked a total of 17 hours; and on 2 February 1 project manager and 1 superintendent each worked 9½ hours and 4 laborers worked a total of 35 hours. JC's certified payroll, in pertinent part, stated that Messrs. Butler and Bybee, salaried employees, worked both Saturday and Sunday and that laborers Gregory Collette, Audie Collette, Scott Bybee, and Dietrich Smith worked a total of 48 straight hours and 4 overtime hours (ex. A-1).

19. Ms. Butler neither prepared nor participated in the preparation of either PCO 110 or the change order estimate. Ms. Butler testified the claimed 20 operator hours were compensation for the project manager, Mr. Bybee, operating equipment and the claimed 20 supervision hours were compensation for Mr. Butler, both of which were allocated as direct field costs. Ms. Butler further testified the mark-ups on the PCOs of 10 percent for field overhead and 3 percent for home office overhead did not include payments for overtime made to Messrs. Bybee and Butler. Ms. Butler could not explain, and we are unable to reconcile, why Mr. Bybee's PCO requested only 50 hours labor since 52 total hours of labor were reported on the certified payroll. Similarly, she could not explain why, if Mr. Bybee operated machinery, no equipment costs were included on the PCO. (Tr. 1/241-55, 2/41-44; ex. A-1; finding 10 *supra*)

20. Mr. Butler, during the entitlement hearing, testified the total amount of \$1,086.69 and the request for an extension of two calendar days was compensation for having worked the weekend of 1 and 2 February 1986, at overtime rates, to comply with the Government's insistence a water line tie-in be made. JC charged the Navy overtime rates for weekend work although workers were not paid overtime unless they worked longer than 8 hours a day or 40 hours a week. (E-tr. 3/123; finding 10 *supra*)

21. The CO, conceding that JC worked overtime on 1 and 2 February 1986, argues that JC is only entitled to payment of \$360.36 for 52 labor M/H, for overtime work performed at stations 5+62, 5+33 and 4+22, at a rate of \$6.93 per M/H, the difference between the laborers regular hourly wage of \$13.85 and the overtime hourly wage of \$20.78 (E-R4, tabs 97, 252; E-finding 54). On 24 July 1986 the Government issued unilateral Modification No. P00052 whereon at item “f” it was reported that JC was being compensated for “overtime work accomplished on 1 and 2 February 1986. (PCO 110).” Modification No. P00052 did not specify an amount for individual items “f” through “n” (PCO Nos. 110 through 118),<sup>8</sup> the CO electing instead to apply a total amount of \$8,825, for these items which he computed as follows:

PRIME CONTRACTOR’S WORK		
ITEM	COST	
LABOR	\$3,780	
FRINGE BENEFITS	INCLUDED	
MATERIAL (incl. sales tax)	\$2,128	
RENTAL EQUIPMENT (incl. sales tax)	\$ 301	
SUBTOTAL		\$6,209
FIELD OVERHEAD (10% of subtotal)	\$ 621	
LIABILITY & COMPENSATION INS. (13% of labor cost)	\$ 491	
SUBTOTAL	\$7,321	
HOME OFFICE OVERHEAD (3% of subtotal)	\$ 220	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	\$ 621	
SUBTOTAL		\$8,162

SUMMARY		
PRIME CONTRACTOR’S WORK	\$8,162	
PRIME CONTRACTOR’S PROFIT 6%	\$ 490	
Subtotal		\$8,652
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	\$ 173	
TOTAL COST		\$8,825

22. Although Modification No. P00052 did not record an amount for item “f” we find the CO recommended the unilateral estimate amount of \$360.00 plus mark-ups (*see* note 8 *supra*; finding 21 *supra*).<sup>9</sup> The Government contends the claimed salaries for the salaried employees are not recoverable as a direct job cost since these costs were an indirect overhead expense recovered under JC’s 10 percent field overhead mark-up (finding 15 *supra*). The Government neither contends nor argues that any of the other costs claimed were duplicative of any costs otherwise recovered or included in overhead.

### DECISION

It is uncontested that on 1 and 2 February 1986 JC’s superintendent, project manager, and two and four laborers respectively worked. JC’s burden of proof regarding the causal connection between the particular costs allegedly incurred and the claim event, under

the circumstances, has been met. *R. W. Contracting, Inc., supra*. Mr. Butler testified at the entitlement hearing that PCO 110 was for overtime for 1 and 2 February (finding 20) and we limit our decision accordingly.

JC has failed to prove it incurred additional costs due to having paid overtime to its salaried employees or that the allocated 10 percent field overhead costs did not include any alleged additional compensation paid to salaried employees (findings 13-15 and Discussion *supra*). This portion of JC’s claim is disallowed.

Addressing JC’s request for additional compensation for the laborers who worked the weekend of 1 and 2 February 1986, we note that the Government acknowledges that JC’s laborers worked a total of 52 hours, the same number of hours shown on JC’s DRIs for that weekend (findings 18, 22). We accept the Government’s contention that since the laborers were paid regular hourly wages of \$13.85 plus fringe benefits for the total hours worked the Government’s remuneration for the laborers’ overtime work is \$6.93 per M/H, the difference between the regular hourly wage rate and the overtime wage rate of \$20.78. The laborers having been paid fringe benefits were not entitled to additional fringe benefits payments. We compute JC’s EA for 1 and 2 February 1986 as follows:

ITEM	QUANTUM	
LABOR (52 hours at \$6.93 per hour)	\$360.36	
BENEFITS	00.00	
SUBTOTAL		\$360.36
FIELD OVERHEAD (10% of subtotal)	36.04	
LIABILITY & COMPENSATION INS. (13% of labor cost)	46.85	
SUBTOTAL		\$443.25
HOME OFFICE OVERHEAD (3% of subtotal)	13.30	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	46.85	
SUBTOTAL		\$503.40
PRIME CONTRACTOR’S PROFIT 6%	30.20	
SUBTOTAL		\$533.60
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	10.67	
TOTAL QUANTUM ENTITLEMENT		\$544.27

JC’s appeal is sustained in the amount of \$544.27.<sup>10</sup>

#### 5. ADDITIONAL WORK AT STATION 7+01

#### FINDINGS OF FACT

23. JC’s PCO 81 claimed an EA in the amount \$1,267.10 for additional work performed on 5 February 1986 at station 7+01. The tie-in at station 7+01 was part of the new water system being installed and JC performed changed work at this location. JC’s BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (ex. A-2; E-tab 98):

BREAKDOWN ESTIMATE OF DIRECT COSTS							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Laborer	8	13.85	110.80				
Benefits	8	5.72	45.76				
Operator	4	17.29	69.16				
Benefits	4	7.24	28.96				
Supervision	4	20.00	80.00				
Backhoe	4					30.00	120.00
Pickup	4					9.80	39.20
Wacker	4					2.50	10.00
Office & Equipment	4					20.00	80.00
Tools (Power tools, Hand tools, water pump, etc.)	4					20.00	80.00
Concrete	2			55.00	110.00		
8" Pipe	6			7.00	42.00		
8" 90° Ell	2			78.97	157.94		
TOTAL			334.68		309.94		329.20

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	259.96	
FRINGE BENEFITS	74.72	
MATERIAL (incl. sales tax)	309.94	
RENTAL EQUIPMENT (incl. sales tax)	329.20	
SUBTOTAL		973.82
FIELD OVERHEAD (10% of subtotal)	97.38	
LIABILITY & COMPENSATION INS. (13% of labor cost)	33.79	
SUBTOTAL		1,104.99
HOME OFFICE OVERHEAD (3% of subtotal)	33.15	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	33.79	
SUBTOTAL		\$1,171.93

SUMMARY		
PRIME CONTRACTOR'S WORK	\$1,171.93	
PRIME CONTRACTOR'S PROFIT 6%	70.32	
SUBTOTAL		1,242.25
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	24.85	
TOTAL COST		\$1,267.10

Request for one (1) additional day.

24. On the 5 February 1986 DRI JC reported that the tie-in at station 7+01 was completed but that additional material and time was needed because "the old 8-inch line

broke last week” (ex. A-2). JC’s certified payroll record for 5 February indicated that the only employees working were either salaried employees or laborers (*id*). The Government contends the claimed additional salaries for the salaried employees are not recoverable as direct job costs since these costs were recovered under JC’s 10 percent field overhead mark-up (finding 15 *supra*). The Government neither contends nor argues that any of the other costs claimed were duplicative of any costs otherwise recovered or included in “overhead.” The CO denied, in total, JC’s EA claim (E-finding 61).

DECISION

JC has failed to prove that it incurred additional cost due to having compensated its salaried employees, including the backhoe operator, remuneration over and above their salaries or that any additional compensation allegedly paid to salaried employees was not included in the allocated 10 percent field overhead mark-up (finding 13-15 and Discussion *supra*). The supervision and the backhoe operator’s labor and fringe benefits, are disallowed. We allocate 10 percent of labor cost for equipment costs except for the backhoe which is compensable at the rate of \$21.70 per M/H (finding 11b *supra*). We accept JC’s other unrebutted costs to make the tie-in at station 7+01 and we compute the EA for the additional work performed on 5 February 1986 at station 7+01 as follows:

ITEM	COST	
LABOR (8 M/H @ \$13.85 per M/H)	\$110.80	
FRINGE BENEFITS (8 M/H @ 5.72 per M/H)	45.76	
OPERATOR	0	
SUPERVISION	0	
MATERIAL (incl. sales tax)	309.94	
BACKHOE (unit cost - \$21.70 x 4 M/H)	86.80	
EQUIPMENT (10% of labor costs of \$110.80)	11.08	
SUBTOTAL		\$564.38
FIELD OVERHEAD (10% of subtotal)	56.44	
LIABILITY & COMPENSATION INS. (13% of labor cost of \$110.80)	14.40	
SUBTOTAL		\$635.22
HOME OFFICE OVERHEAD (3% of subtotal)	19.06	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	14.40	
Subtotal		\$668.68
PRIME CONTRACTOR’S PROFIT 6%	40.12	
SUBTOTAL		\$708.80
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	14.18	
TOTAL COST		\$722.98

JC’s appeal is sustained in the amount of \$722.98

7. CHANGE ORDER WORK AT STATION 32+44 ON WRIGHT AVE (2/25/86).

FINDINGS OF FACT

25. On 26 February 1986 Carl Bybee submitted PCO 117 requesting an EA of \$3,697.51 and a time extension of 4 calendar days for “Change Order request for work done that is not on the original contract or changes. Station 32+44 on Wright Ave. (2/25/86)” (ex. A-3; E-finding 67; E-R4, tabs, 97, 100; E-tr. 3/135). The tie-in at station 32+44 was part of the new water system being installed and JC performed changed work at this location. JC’s BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated:

BREAKDOWN ESTIMATE OF DIRECT COSTS									
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT		CREDIT TO GOVERNMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNITS	TOTAL CREDIT
Labor	28	13.85	387.80					2	27.70
Benefits	28	5.72	160.16					2	11.44
Operator	14	17.29	242.06					2	34.58
Benefits	14	7.24	101.36					2	14.48
Supervision	8	20.00	160.00					1	20.00
Backhoe	14					30.00	420.00	2	60.00
Pickup	14					9.80	137.20	1	9.80
Welder	14					8.00	112.00	2	16.00
Power Plant	14					2.50	35.00	2	28.00
Hand Tools, Power tools, etc.	14					20.00	280.00	2	40.00
Office & Equipment	14					20.00	280.00	1	14.00
2" Pipe	15			2.62	39.30			0	
2" 90° Ell	8			2.44	19.52			0	
Soder and Misc. Material	1			15.00	5.00			0	
Concrete	3			55.00	165.00			0	
Air Compressor & Jackhammer	14					20.00	280.00	2	40.00
<b>TOTAL</b>			1,051.38		238.82		1,544.20		316.00

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR’S WORK		
ITEM	COST	
LABOR	\$ 789.86	
FRINGE BENEFITS	261.52	
MATERIAL (incl. sales tax)	238.82	
RENTAL EQUIPMENT (incl. sales tax)	\$1,544.20	
SUBTOTAL		\$2,834.40
FIELD OVERHEAD (10% of subtotal)	283.44	

LIABILITY & COMPENSATION INS. (13% of labor cost)	102.68	
SUBTOTAL		\$3,220.52
HOME OFFICE OVERHEAD (3% of subtotal)	96.62	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	102.68	
TOTAL		\$3,419.82

SUMMARY		
PRIME CONTRACTOR'S WORK	\$3,419.82	
PRIME CONTRACTOR'S PROFIT 6%	205.19	
		\$3,625.01
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	72.50	
TOTAL COST		\$3,697.51
TOTAL CREDIT		316.00

Request for four (4) additional calendar days

26. JC's DRI for February 25 1986 stated (ex. A-3; E-tab 100):

Bobby & Danny worked on tie-in at Station 32+25 on Q.R. for 6 hr. Tim & Carl worked on tie-in at Station 32+44 on Wright Ave. Scott worked on tie-in at 28+12 and at 2+90 and at 0+63, 1 hr. each on Wright Ave. Bobby, Dan, Scott, and Tim worked on concrete sidewalks and streets. Jack helped on all areas. Carl worked on job until noon, then negotiated with Navy in afternoon. Myrna worked on change orders and general office work. Scott and Tim worked on tie-in at 32+25 on Q.R., 1 hr. each. Dan Kelly and two other men on Area 4.

27. The certified payroll record for 25 February 1986 stated that four salaried employees, Jack Butler, Robert Clark, Carl and Myrna Bybee worked; that of the two individuals reported as working at station 32+44, "Carl [Bybee and] Tim [Smith]," only Tim Smith's hours, 4¾ overtime as laborer and 4¾ overtime as operator, were recorded (ex. A-3).

28. JC's contention that changed work was performed at station 32+44 on 25 February 1986 is uncontroverted by the Government. On 24 July 1986 the CO issued unilateral Modification No. P00052 wherein at item "m" it was reported that JC was being compensated for (E-R4, tab 97, SR4, tab 3):

Tie-in at station 32+44 on Wright Avenue; provide and install 4-2" copper elbows, 15 LF of 2" copper pipe, and 1 cubic yard of concrete 10" thick. Includes breaking out 18 LF of concrete 10" thick, additional excavation, backfill and compaction. (PCO #117)

29. The GOVERNMENT ESTIMATE OF DIRECT COSTS FOR CHANGE ORDERS stated that for PCO 117 JC was entitled to payment of \$596.00 as the direct costs for additional work performed at station 32+44 Wright Avenue. Although there was no amount recorded for item “m” we determine the CO paid \$596.00 plus mark-ups for the changed work. (E-R4, tab 97; finding 21 *supra*; see note 8 *supra*)

30. The Government contends the claimed additional salaries of the salaried employees are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC’s 10 percent field overhead mark-up (finding 15 *supra*). The Government neither contends nor argues that any of the other costs claimed were duplicative of any costs otherwise recovered or included in “overhead.”

### DECISION

We do not accept Ms. Butler’s contention the changed work at station 32+44 was done over a period of several days, since this testimony does not conform with Mr. Bybee’s submitted PCO which listed “2/25/86” as the date the changed work was done (finding 25 *supra*). Assuming, *arguendo*, we were to accept Ms. Butler’s contention that the changed work at station 32+44 was done over a period of time our determination would not change since JC has failed to carry its burden of proving the work performed on days other than 25 February was changed work and not original contract work. *J.C. Equipment Corp., supra*.

JC’s contention it is entitled to additional compensation for changed work performed at station 32+44 is uncontroverted. JC’s 25 February 1986 DRI states that “Tim & Carl worked on tie-in at station 32+44 on Wright Ave.” JC’s certified payroll records indicate that on 25 February 1986 Mr. Tim Smith worked 4¾ hours as a laborer and 4¾ hours as a machine operator; that Mr. Carl Bybee, JC’s salaried project manager, and Mr. Robert Clark, JC’s salaried superintendent/operator also worked at station 32+44 (findings 26, 27 *supra*).

JC has failed to prove it incurred additional costs due to having paid its salaried employees wages over and above their salaries or that the additional compensation allegedly paid to salaried employees was not included in the allocated 10 percent field overhead mark-up (findings 13-15 and Discussion *supra*). Recovery of these alleged costs is disallowed.

Addressing Mr. Smith’s hours of work on 25 February 1986, there is sufficient evidence establishing that he worked 9½ hours that day; that including his working at station 32+44 he also is reported to have worked on concrete sidewalks and streets and for 1 hour on the tie-in at station 32+25 (finding 26 *supra*). JC has failed to establish the type of labor and/or the amount of time Mr. Smith worked at station 32+44. Accordingly, we determine that Mr. Smith performed only 4¾ hours of machine operator duties at station

32+44 and the remaining time he worked on concrete sidewalks and streets and at the tie-in at station 32+25.

As for the amount of material used to complete the changed work at 32+44 we accept JC's PCO statement of material used as reasonably accurate since it tracks costs for the same or similar items bilaterally accepted in negotiated PCOs (finding 11a *supra*). We apply 10 percent of the labor cost to compensate JC for equipment costs, except for the backhoe for which we apply a unit cost of \$21.70 (finding 11b *supra*). We accept Mr. Bybee's credit to the Government but will recompute it in accordance with our determination of the EA to be awarded.

The Board computes JC's EA for the additional work performed at station 32+44 on 25 February 1986 as follows:

ITEM	COST	
LABOR (4¾ M/H @ \$17.29 PER M/H)	\$ 82.13	
FRINGE BENEFITS (4¾ M/H @ \$7.24 PER M/H)	34.39	
SUPERVISION (SALARIED EMPLOYEE)	0	
OPERATOR (SALARIED EMPLOYEE)	0	
GOVERNMENT CREDIT FOR LABOR (10% of labor credit computed by Mr. Bybee) <sup>11</sup>	(16.31)	
MATERIAL (incl. sales tax)	238.82	
BACKHOE (4¾ M/H @ \$21.70 PER M/H)	103.08	
GOVERNMENT CREDIT FOR BACKHOE (7% of credit computed by Mr. Bybee) <sup>12</sup>	(7.21)	
EQUIPMENT (10% of labor costs of \$82.13)	8.21	
GOVERNMENT CREDIT FOR EQUIPMENT (10% of labor credit computed by Mr. Bybee)	(3.91)	
SUBTOTAL		\$ 439.20
FIELD OVERHEAD (10% of subtotal)	43.92	
LIABILITY & COMPENSATION INS. (13% of labor cost)	10.68	
SUBTOTAL		\$ 493.80
HOME OFFICE OVERHEAD (3% of subtotal)	14.81	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	10.68	
PRIME CONTRACTOR'S WORK		\$ 519.29
PRIME CONTRACTOR'S PROFIT 6%	31.16	
SUBTOTAL		\$ 550.45
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	11.01	
TOTAL COST		\$ 561.46

JC's appeal is sustained in the amount of \$561.46.

9. ADDITIONAL WORK AT STATIONS 0+93, 2+53 AND 2+72

FINDINGS OF FACT

31. The CO’s final decision, finding merit in JC’s claim for an EA for “Change Order request for work at Stations 0+93, 2+53 and 2+72 in grass area caused by the fact that the line [JC was to tie] into was a dead line. (2/22/86 and 2/23/86),” unilaterally awarded JC \$2,520.00 but denied JC’s time extension request. The tie-in at stations 0+93, 2+53 and 2+72 were part of the new water system being installed and JC performed changed work at these locations. (E-R4, tab 102, 149; E-finding 73) JC’s BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (*id.*):

BREAKDOWN ESTIMATE OF DIRECT COSTS <sup>13</sup>					
ITEM OF WORK	NO. OF UNITS	LABOR		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Labor	17	20.78	353.26		
Benefits	17	5.72	97.24		
Operator	8.5	25.94	220.49		
Benefits	8.5	7.24	61.54		
Supervision	8.5	30.00	255.00		
Backhoe	8.5			30.00	255.00
Pickup	8.5			9.80	83.30
Office & Equipment	8.5			20.00	170.00
Water Pump	8.5			2.50	21.25
Welder	8.5			8.00	68.00
Wacker	8.5			2.50	21.25
Power Plant	8.5			2.50	21.25
Hand Tools Power Tools, etc.	8.5			20.00	170.00
Air Compressor	8.5			20.00	170.00
TOTAL			987.53		980.05

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR’S WORK		
ITEM	COST	
LABOR	828.75	
FRINGE BENEFITS	158.78	
MATERIAL (incl. sales tax)	00.00	
RENTAL EQUIPMENT (incl. sales tax)	980.05	
SUBTOTAL		1,967.58
FIELD OVERHEAD (10% of subtotal)	196.76	
LIABILITY & COMPENSATION INS. (13% of labor cost)	107.74	
SUBTOTAL		2,272.08
HOME OFFICE OVERHEAD (3% of subtotal)	68.16	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	107.74	
TOTAL		\$ 2,447.98

SUMMARY		
PRIME CONTRACTOR'S WORK	2,447.98	
PRIME CONTRACTOR'S PROFIT 6%	146.88	
SUBTOTAL	2,594.86	
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	51.90	
TOTAL COST		2,646.76

Request for two (2) additional calendar days

32. The Government neither contests the M/Hs JC claimed having spent in attempting to make the connections nor that the work was done on a weekend (ex. A-4; E-R4, tab 102). The Government, however, contends the claimed salaries for the salaried employee are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC's 10 percent field overhead mark-up (finding 15 *supra*). The Government neither contends nor argues that any of the other costs claimed were duplicative of any costs otherwise recovered or included in "overhead."

### DECISION

The Government does not contest JC's contention it was required to perform changed work on Saturday and Sunday, 22 and 23 February 1986, at stations 0+93, 2+53 and 2+72 in grass area because the line JC was to tie into was a dead line (finding 31 *supra*).

JC has failed to prove it incurred additional costs due to having paid its salaried employees, including the operator, wages over and above their salaries or that the additional compensation allegedly paid to the salaried employees was not included in the 10 percent field overhead mark-up (findings 13-15 and Discussion *supra*). We disallow recovery of these alleged costs. We allow recovery of the backhoe costs since the Government does not contest the fact that a new line had to be uncovered.

We concur in JC's claim for remuneration for its labor costs at time and a half rates because this was weekend work (findings 11c, 32, *supra*). The Board finds JC's EA for additional work at stations 0+93, 2+53 and 2+72 as follows:

ITEM	COST	
LABOR (17 M/H @ \$20.78 per M/H)	\$ 353.26	
FRINGE BENEFITS (17 M/H @ \$5.72 per M/H)	97.24	
SUPERVISION (SALARIED EMPLOYEE)	0	
OPERATOR (SALARIED EMPLOYEE)	0	
BACKHOE (8.5 M/H @ \$21.70 PER M/H)	184.45	
RENTAL EQUIPMENT (10% of labor costs of \$573.84)	57.38	
SUBTOTAL		692.33
FIELD OVERHEAD (10% of subtotal)	69.23	
LIABILITY & COMPENSATION INS. (13% of labor cost)	45.92	
SUBTOTAL		\$807.48
HOME OFFICE OVERHEAD (3% of subtotal)	24.22	

SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	45.92	
PRIME CONTRACTOR'S WORK		\$877.62
PRIME CONTRACTOR'S PROFIT 6%	52.66	
SUBTOTAL		\$930.28
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	18.61	
TOTAL COST		\$948.89

JC's appeal is sustained in the amount of \$948.89

25. ADDITIONAL WORK AT STATION 19+63

FINDINGS OF FACT

33. On 1 April 1986 JC submitted PCO 113 claiming an EA in the amount of \$5,341.56 and four calendar days time extension for "Station 19+63 Work Accomplished above and beyond change order agreed to: 3/24, 3/13, 3/12, 3/10, 3/8, 3/6, 3/5, 2/24, 2/13, 1986" (E-finding 125; E-R4, tabs 274, 282). The tie-in at station 19+63 was part of the new water system being installed and JC performed changed work at this location. JC PCO 113 did not distinguish contract work from change order work for the days in question. JC's BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (ex. A-5; E-R4, tabs 97, 117):

BREAKDOWN ESTIMATE OF DIRECT COSTS							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Labor	33	13.85	457.05				
Benefits	33	5.72	188.76				
Operator	33	17.29	570.57				
Benefits	33	7.24	238.92				
Supervision	16	20.00	320.00				
Backhoe	16					30.00	480.00
Pickups (2)	32					9.80	313.60
Office & Equipment	16					20.00	320.00
Wacker	16					2.50	40.00
Power Plant	16					2.50	40.00
Power Tools, Hand Tools, Etc.	16					20.00	320.00
4" 90° Ell	2			54.06	108.12		
4" 45° Ell	2			50.35	100.70		
4 MJ x FL Adaptor	1			58.30	58.30		
30" Spool	1			131.33	131.33		
4" Pipe	10			4.24	42.40		
Concrete	3			80.00	240.00		
Nuts, Bolts & Gaskets	3			11.66	34.98		
4" collar	1			18.00	18.00		

Special Parts, Materials & Repairs	1			50.00	50.00		
TOTAL			1,775.30		783.83		1,513.60

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	\$1,347.62	
FRINGE BENEFITS	427.68	
MATERIAL (incl. sales tax)	783.83	
RENTAL EQUIPMENT (incl. sales tax)	1,513.60	
SUBTOTAL		\$4,072.73
FIELD OVERHEAD (10% of subtotal)	407.27	
LIABILITY & COMPENSATION INS. (13% of labor cost)	175.19	
SUBTOTAL		\$4,655.19
HOME OFFICE OVERHEAD (3% of subtotal)	139.66	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	244.36	
TOTAL		\$5,039.21

SUMMARY		
PRIME CONTRACTOR'S WORK	\$5,039.21	
PRIME CONTRACTOR'S PROFIT 6%	302.35	
SUBTOTAL		\$5,341.56
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	00.00	
TOTAL COST		\$5,341.56

Contractor Requests Four (4) Additional Calendar Days.

34. JC's certified payroll records for 3/24, 3/13, 3/12, 3/10, 3/8, 3/6, 3/5, 2/24, 2/13, 1986 indicated that except for salaried employees the only other employees working were laborers and the operator/laborer, Mr. Tim Smith (ex. A-5). At the quantum hearing JC, in support of its claim, submitted DRIs for 13 and 24 February and 5, 6, 8, 10, 12, 13 and 24 March 1986 (*id.*). Although each of the DRIs indicated work was performed at station 19+63 JC has not identified, and we are unable to distinguish, changed work from original contract work (finding 33 *supra*).

35. On 24 July 1986 the CO issued unilateral Modification No. P00052 wherein at item "i" it was reported that JC was being compensated for (E-finding 126; E-R4, tab 97):

Tie-in at station 19+63 on Wright Avenue; provide and install  
2-4" 90° bends, 2-4" 45° bends, 1-4" adaptor MJ X FL,  
1-4"x30" D.I. spool, 1-4" collar, and 10 LF of 4" D.I. pipe.  
(PCO #113)

36. The GOVERNMENT ESTIMATE OF DIRECT COSTS FOR CHANGE ORDERS stated that for the additional work performed at station 19+63 JC was entitled to payment of

\$671.00<sup>14</sup> for 23.23 M/H of labor at a cost of \$28.87 per M/H; \$469 for material; and \$34 (5 percent of labor costs) for equipment for a total direct cost EA of \$1,174.00 (E-R4, tab 97). Although Modification No. P00052 did not record an amount for item “i” we conclude the CO paid \$1,174.00 plus mark-ups (see note 8 *supra*).

37. The Government contends the claimed salaries for the salaried employees are not recoverable as direct job costs since these costs were recovered as an indirect overhead expense under JC’s 10 percent field overhead mark-up (finding 15 *supra*). The Government neither contends nor argues that any of the other costs claimed were duplicative of any costs otherwise recovered or included in “overhead.”

### DECISION

It is uncontested that station 19+63 was to be tied into the new water system being installed and that JC performed changed work at that station (finding 33 *supra*). Under these circumstances JC had the burden of proving entitlement to an equitable adjustment for performing changed work at station 19+63 over the period of the nine days cited in PCO 113. JC, to meet its burden of proof, has submitted DRIs, which fail to distinguish changed work from original contract work, and the PCO, which only made a general statement that changed work was performed. JC has not introduced evidence pointing to what changed work was performed. We therefore turn to the Government’s estimate to resolve the issue of how much, if any, additional cost JC incurred while performing uncompensated changed work.

The Board in reviewing the Government’s direct cost estimate found that the Government computed the direct cost for labor, at a rate of \$28.87 per M/H for 23.23 M/Hs, to be \$671.00 (finding 36 *supra*). However, because the Government neither provided evidence on how its labor rate was computed nor attempted to reconcile the difference between its M/H rate and the \$19.75 (labor and benefits) for laborers and the \$24.53 (labor and benefits) for operator M/H rate listed on PCO 113 and certified payroll we accept JC’s PCO 113 rate as accurate. We accept the Government’s computation that 23.23 M/Hs were expended to complete changed work at station 19+63.

That JC performed changed work at station 19+63 is uncontested (finding 33 *supra*). Since JC failed to prove the work performed at station 19+63, on the nine days cited in PCO 113, was not contract work we disallow both the backhoe and backhoe operator portions of the claim because of a lack of proof the backhoe was used for changed work and not original contract work. In like fashion, JC has failed to prove it incurred additional costs due to having paid its salaried employees wages over and above their salaries or that the additional compensation allegedly paid to the salaried employees was not included in the allocated 10 percent field overhead mark-up (findings 13-15 and Discussion, 37 *supra*). Accordingly, we also disallow recovery of these costs.

We have compared JC's claimed materials with the materials the Government acknowledged was used and find them basically in agreement. However, the prices for the material are different. We accept JC's material prices since they are more in line with agreed costs for the same or similar items reached during negotiations for bilaterally executed modifications (finding 11a *supra*). We allocate 10 percent of labor cost for equipment costs except for the backhoe which we disallow.

The Board determines JC's EA for additional work at station 19+63 is:

ITEM	COST	
Labor (23.23 M/H @ \$13.85 per M/H)	\$321.74	
Fringe Benefits (23.23 M/H @ \$5.72 per M/H)	132.88	
Supervisor (salaried employee)	0	
Operator (salaried employee)	0	
Material (incl. sales tax)	783.83	
Backhoe	0	
Equipment (10% of labor costs)	32.17	
SUBTOTAL		\$1,270.62
FIELD OVERHEAD (10% of subtotal)	127.06	
LIABILITY & COMPENSATION INS. (13% of labor cost)	41.83	
SUBTOTAL		\$1,439.51
HOME OFFICE OVERHEAD (3% of subtotal)	43.19	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	41.83	
PRIME CONTRACTOR'S WORK		\$1,524.53
PRIME CONTRACTOR'S PROFIT 6%	91.47	
SUBTOTAL		1,616.00
PRIME CONTRACTORS BOND PREMIUM (2% of subtotal)	32.32	
TOTAL COST		\$1,648.32

JC's appeal is sustained in the amount of \$1,648.32.

## 26. ADDITIONAL WORK AT STATION 20+54

38. On 1 April 1986 JC submitted PCO 114 claiming an EA in the amount of \$4,046.31 and three days time extension for "Work Accomplished above and beyond change orders agreed to at station 20+54, 3/25, 3/19, 3/13, 3/12, 3/5, 1986" (ex. A-6; E-R4, tab 97, 118). It is uncontested the tie-in at Station 20+54 was part of the new water system being installed and that JC performed changed work at this location. JC's PCO 114 did not distinguish changed work from original contract work for the days listed. JC's BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated:

BREAKDOWN ESTIMATE OF DIRECT COSTS							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Labor	24	13.85	332.40				
Benefits	24	5.72	137.28				
Operator	24	17.29	414.96				
Benefits	24	7.24	173.76				
Supervision	12	20.00	240.00				
Backhoe	12					30.00	360.00
Pickups (2)	24					9.80	235.20
Office & Equipment	12					20.00	240.00
Wacker	12					2.50	30.00
Power Plant	12					2.50	30.00
Power Tools, Hand Tools, Etc.	12					20.00	240.00
4" 90° Ell	2			54.06	108.12		
4" 45° Ell	2			50.35	100.70		
4 MJ X FL Adaptor [sic]	2			58.30	116.60		
30" Spool	1			131.33	131.33		
4" Pipe	12			4.24	50.88		
Concrete	3			80.00	240.00		
Nuts, Bolts & Gaskets	3			11.66	34.98		
4" Collar	1			18.00	18.00		
4" 22½ Ell	2			47.49	94.98		
Special Parts, Materials & Repairs	1			50.00	50.00		
TOTAL			1,298.40		945.59		1,135.20 <sup>15</sup>

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	987.36	
FRINGE BENEFITS	311.04	
MATERIAL (incl. sales tax)	945.59	
RENTAL EQUIPMENT (incl. sales tax)	1,135.20	
SUBTOTAL		3,379.19
FIELD OVERHEAD (10% of subtotal)	337.92	
LIABILITY & COMPENSATION INS. (13% of labor cost)	128.36	
SUBTOTAL		3,845.47
HOME OFFICE OVERHEAD (3% of subtotal)	115.36	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	128.36	
TOTAL		\$4,089.19

SUMMARY		
PRIME CONTRACTOR'S WORK	\$4,089.19	
PRIME CONTRACTOR'S PROFIT 6%	245.35	
SUBTOTAL		4,334.54
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	86.69	
TOTAL COST		\$4,421.23

Contractor requests Three, (3), additional calendar days.

39. JC's certified payrolls for 5, 12, 13, 19, and 25 March 1986 indicated that the only employees working were salaried, laborers and one laborer/operator, Mr. Tim Smith (ex. A-6). JC, at the quantum hearing, to support its claim, submitted DRIs for 5, 12, 13, 19, and 25, March 1986 which failed to distinguish original contract work from changed work (*id.*). The DRIs stated in pertinent part (ex. A-6):

5 March 1986 –

... Raul & Tim then worked at Station 20+54 on Wright Ave. excavating and getting ready to install fittings in large box (2 hrs.). ...

12 March 1986 –

... We worked on testing at 20+54, 22+75 and 23+66 but didn't get finished also because it kept trying to rain. ... We also poured concrete at Station ... 20+54 ... on Wright Ave. Scott and Bobby and Carl did tie-in #65 1/2" at Curtis Road, Scott 1 hr., Bobby and Carl 2 hrs. It was necessary to complete this tie-in as when we were excavating to make room for tapping machine we hit the existing line and broke it. The plans say its a 1/2" line but in fact it is a 5/8" line and Carl had to go get additional parts. ...

13 March 1986 –

... Jack, Carl, Tim and Dan poured concrete at Station ... 20+54 on Wright Ave. ...

19 March 1986 –

Bobby tested lines all day at Stations 23+63 and 20+54 on Wright Ave. ...

25 March 1986 –

Scott worked on tie-in at Station 20+54 all day. Jack helped him until noon and Bobby helped him for 2 hrs. . . .

40. On 24 July 1986 the CO issued unilateral Modification No. P00052 wherein at item “j” it was reported that JC was being compensated for (E-finding 127-28; E-R4, tab 97):

Tie-in at station 20+54 on Wright Avenue; provide and install 2-4”90° bends, 2-4” 45° bends, 1-4” adaptor MJ X FL, 1-4”x30” spool, 1-4” collar, 2-4 22½ bends, and 10 LF of 4” D.I. pipe. (PCO #114)

41. The GOVERNMENT’S ESTIMATE FOR DIRECT COSTS FOR CHANGE ORDERS stated that for the additional work performed at station 20+54 JC was entitled to payment of \$786 for 27.23 M/H of labor at the rate of \$28.87 per M/H;<sup>16</sup> \$572 for material; and \$39 (5 percent of labor costs) for small tools, for a total direct cost EA of \$1,397 (E-R4, tab 97). Although Modification No. P00052 did not record an amount for item “j” we conclude the CO paid \$1,397.00 plus mark-ups, the amount reported on the Government’s estimate (*see note 8 supra*).

42. The Government contends the claimed salaries for the salaried employees are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC’s 10 percent field overhead mark-up (finding 15 *supra*). The Government neither contends nor argues that any of the other claimed costs were duplicative of any cost otherwise recovered or included in “overhead.”

### DECISION

It is uncontested that station 20+54 would be tied into the new water system being installed and that JC performed changed work at station 20+54 (finding 38 *supra*). JC, under these circumstances, had the burden of proving entitlement to an EA and that the work performed during the five days cited in PCO 114 was changed work and not original contract work. JC, to meet its burden of proof, submitted DRIs which failed to distinguish change work from original contract work, and the PCO, which only made a general statement that changed work was performed at station 20+54 (finding 39 *supra*). JC, failing to introduced evidence sufficient for us to determine what work performed during the five days cited in PCO 114 was changed work, has failed to prove a causal connection existed between the alleged increase costs and the claimed event, *i.e.*, the performance of work at station 20+54 on the days cited in PCO 114 was changed work and not original contract work. *Triax-Pacific v. Stone, supra; DWS, Inc., supra; R.W. Contracting Inc., supra.*

Under the circumstances the Board turns to the Government's estimate to resolve the issue of how much, if any, extra cost JC incurred while performing uncompensated changed work. On its direct cost estimate the Government computed the direct M/H cost for labor, at a rate of \$28.87 per M/H for 27.23 M/Hs, to be \$786.00 (finding 41 *supra*). Since the Government neither provided evidence on how its M/H labor rate was derived nor reconciled the difference between its M/H labor rate and the M/H labor rate listed on PCO 114 and certified payrolls of \$19.57 (labor and benefits) for laborers, we accept JC's PCO 114 rate as accurate. We accept the Government's calculation that 27.23 M/Hs were expended to complete changed work at station 20+54.

Since JC failed to prove all the work performed at station 20+54, on the five days cited in PCO 114, was change order work (finding 39 *supra*) we disallow the backhoe and backhoe operator because of a lack of proof the backhoe as used for changed work and not original contract work. JC has also failed to prove it incurred additional costs due to having paid the salaried employees wages over and above their salaries or the additional compensation allegedly paid to salaried employees was not included in the allocated 10 percent field overhead mark-up (findings 13-15 and Discussion *supra*). Recovery of these costs are also disallowed.

We have compared the material costs claimed by JC with that acknowledged by the Government and accept JC's cost which are more in line with agreed costs for the same or similar items reached during negotiations for bilaterally executed modifications (finding 11a *supra*). We allocate for equipment costs 10 percent of labor cost except for the backhoe which we disallow.

The Board determines JC's EA for additional work at station 20+54 is:

ITEM	COST	
LABOR (27.23 M/H @ \$13.85 per M/H)	\$377.14	
FRINGE BENEFITS (27.23 M/H @ \$5.72 per M/H)	155.76	
SUPERVISION (SALARIED EMPLOYEE)	0	
OPERATOR	0	
MATERIAL (incl. sales tax)	945.59	
BACKHOE	0	
EQUIPMENT (10% of labor costs)	37.71	
SUBTOTAL		\$1,516.20
FIELD OVERHEAD (10% of subtotal)	151.62	
LIABILITY & COMPENSATION INS. (13% of labor cost)	49.03	
SUBTOTAL		\$1,716.85
HOME OFFICE OVERHEAD (3% of subtotal)	51.51	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	49.03	
PRIME CONTRACTOR'S WORK		\$1,817.39
PRIME CONTRACTOR'S PROFIT 6%	109.04	
SUBTOTAL		1,926.43
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	38.53	
TOTAL COST		\$1,964.96

JC's appeal is sustained in the amount of \$1,964.96.

27. ADDITIONAL WORK AT STATION 22+75

43. JC's PCO 115 claimed an EA in the amount of \$5,142.99 and four days time extension for "Work Accomplished above and beyond change orders agreed to at Station 22+75. Change for damage to thrust blocks by rain storms. 3/26, 3/19, 3/18, 3/13, 3/12, 3/8, 3/7, 1986" (ex. A-7; E-R4 tabs 97, 118). The tie-in at station 22+75 was part of the new water system being installed and JC performed changed work at this location. However, JC did not distinguish contract work from change order work on the days in question. JC's BREAKDOWN ESTIMATE OF DIRECT COSTS (for station 22+75 only) and ESTIMATE FOR CHANGE ORDER (as revised by the Board)<sup>17</sup> stated:

BREAKDOWN ESTIMATE OF DIRECT COSTS							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Labor	20.5	13.85	283.93				
Benefits	20.5	5.72	117.26				
Operator	20.5	17.29	354.45				
Benefits	20.5	7.24	148.42				
Supervision	10	20.00	200.00				
Backhoe	10					30.00	300.00
Pickups (2)	20					9.80	196.00
Office & Equipment	10					20.00	200.00
Wacker	10					2.50	25.00
Power Plant	10					2.50	25.00
Power Tools, Hand Tools, Etc.	10					20.00	200.00
4" 90° Ell	3			54.06	162.18		
4" 45° Ell	4			50.35	201.40		
4 MJ X FL Adaptor	2			58.30	116.60		
30" Spool	1			131.33	131.33		
4" Pipe	12			4.24	50.88		
Concrete	3			80.00	240.00		
Nuts, Bolts & Gaskets	3			11.66	34.98		
4" Collar	2			18.00	36.00		
Special Parts, Materials & Repairs	1			50.00	50.00		
<b>TOTAL</b>			1,104.06		1,023.37		946.00

ESTIMATE FOR CHANGE ORDER <sup>18</sup>		
PRIME CONTRACTOR'S WORK		
ITEM	COST	

Labor	\$838.38	
Fringe Benefits	265.68	
Material (incl. sales tax)	\$1,023.37	
Rental Equipment (incl. sales tax)	946.00	
SUBTOTAL	\$3,073.43	
FIELD OVERHEAD (10% of subtotal)	307.34	
LIABILITY & COMPENSATION INS. (13% of labor cost)	108.99	
SUBTOTAL		\$3,489.76
HOME OFFICE OVERHEAD (3% of subtotal)	104.69	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	108.99	
TOTAL		\$3,703.44

SUMMARY		
PRIME CONTRACTOR'S WORK	\$3,703.44	
PRIME CONTRACTOR'S PROFIT 6%	222.21	
SUBTOTAL		3,925.65
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	none	
TOTAL COST		\$3,925.65

Contractor requests four, (4), additional calendar days.

44. JC's certified payrolls for 7, 8, 12, 13, 18, 19, and 26 March 1986 stated the only employees working were salaried, laborers, or operator, Mr. Robert Clark, a salaried employee (ex. A-7). At the quantum hearing JC, in support of its claim submitted DRIs for 7, 8, 12, 13, 18, 19, and 26 March 1986 (*id.*). Although each of the DRIs indicated work was performed at station 22+75, JC has not identified, and we are unable to distinguish, changed work from original contract work (finding 43 *supra*).

45. On 24 July 1986 the CO issued unilateral Modification No. P00052 wherein at item "k" it was reported that JC was being compensated for (E-findings 129-33; E-R4, tabs 97, 119):

Tie-in at station 22+75 on Wright Avenue; provide and install 3-4" 90° bends, 4-4" 45° bends, 2-4" adaptor MJ X FL, 1-4"X30" spool, 2-4" collar, and 12 LF of 4" D.I. pipe. (PCO 115)

46. The GOVERNMENT'S ESTIMATE FOR DIRECT COSTS FOR CHANGE ORDERS for PCO 115 stated JC was entitled to payments of \$944 for 32.7 M/H of labor;<sup>19</sup> \$591 for material; and \$47 (5 percent for labor costs) for small tools; for a total EA for the direct cost for the added work performed at station 22+75 of \$1,582 (E-R4, tab 97). Although Modification No. P00052 did not state an amount applicable for item "k" we conclude the CO did recommend payment of \$1,582 plus mark-ups, the amount reported on the Government's estimate (*see* note 8 *supra*).

47. The Board's decision on entitlement sustained the appeal as to the changed work performed at station 22+75 but denied, for lack of proof, the portion of the appeal associated with the thrust blocks (note 17 *supra*).

48. The Government contends the claimed salaries for the salaried employees are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC's 10 percent field overhead mark-up (finding 15 *supra*). The Government neither contends nor argues that any of the other claimed costs were duplicative of any cost otherwise recovered or included in "overhead."

### DECISION

It is uncontested that station 22+75 would be tied into the new water system being installed under the contract and that JC performed changed work at this location (finding 43 *supra*). JC, having the burden of proving entitlement to an EA for performing changed work at station 22+75, submitted DRIs for the seven days cited in PCO 115 as support for its claim and to meet its burden of proof (finding 44 *supra*). However, the DRIs failed to distinguish change work from original contract work, and PCO 115 only made a general statement that changed work was performed at station 20+54. JC has failed to introduce evidence sufficient for us to determine what work performed during the seven days cited in PCO 115 was changed work. Accordingly, JC has failed to prove a causal connection existed between the alleged increase costs and the claimed event, *i.e.*, the performance of work at station 22+75 on the day cited was changed work and not original contract work. *Triax-Pacific v. Stone, supra; DWS, Inc., supra; R.W. Contracting Inc., supra.*

Under the circumstances the Board turned to the Government's estimate for assistance in resolving the issue of how much, if any, extra cost JC incurred while performing uncompensated changed work. On its direct cost estimate for PCO 115 the Government computed the direct M/H cost for labor, at a rate of \$28.87 per M/H for 32.7 M/Hs, to be \$944.00 (finding 46 *supra*). Since the Government neither provided evidence on how its M/H labor rate was derived nor reconciled the difference between its M/H labor rate and the M/H labor rate listed on PCO 115 and certified payrolls of \$19.57 (labor and benefits) for laborers, we accept JC's PCO 115 rate as accurate. We accept the Government's calculation that 32.7 M/Hs were expended to complete changed work at station 22+75.

That JC performed changed work at station 22+75 is uncontested (finding 43 *supra*). Since JC failed to prove all the work performed at station 22+75, on the seven days cited in PCO 115, was change order work (finding 44 *supra*) we disallow the backhoe cost because of a lack of proof it was used solely for changed work. JC has also failed to prove it incurred additional costs due to having paid salaried employees, including the backhoe operator, wages over and above their salaries or that the alleged additional compensation paid to salaried employees was not included in the allocated 10 percent field overhead

mark-up (findings 13-15 and Discussion *supra*). Recovery of these alleged costs is disallowed.

We accept JC’s material prices since they are more in line with agreed prices for the same or similar items reached during negotiations for bilaterally executed modifications (finding 11a *supra*). We allocate for equipment costs 10 percent of labor cost except for the backhoe which we disallow (finding 11b *supra*).

We also note JC has failed to reconcile its contentions that it was entitled to payment for 20.5 operator M/H with its claim for remuneration for a total of 20 operating hours for the 2 pickup trucks and 10 operating hours for the backhoe. We disallow recovery of the above costs due a failure of proof the trucks were only used for changed work.

The Board determines JC’s EA for additional work performed at station 22+75 is:

ITEM	COST	
LABOR (32.7 M/H @ \$13.85 per M/H)	\$452.90	
FRINGE BENEFITS (32.7 M/H @ \$5.72 per M/H)	187.04	
SUPERVISION (SALARIED EMPLOYEE)	0	
OPERATOR (SALARIED EMPLOYEE)	0	
MATERIAL (incl. sales tax)	\$1,023.37	
BACKHOE (23 M/H @ \$21.70 per M/H)	0	
EQUIPMENT (10% of labor cost)	45.29	
SUBTOTAL		\$1,708.60
FIELD OVERHEAD (10% of subtotal)	170.86	
LIABILITY & COMPENSATION INS. (13% of labor cost)	58.88	
SUBTOTAL		\$1,938.34
HOME OFFICE OVERHEAD (3% of subtotal)	58.15	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	58.88	
PRIME CONTRACTOR’S WORK		\$2,055.37
PRIME CONTRACTOR’S PROFIT 6%	123.32	
SUBTOTAL		2,178.69
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	43.57	
TOTAL COST		\$2,222.26

JC’s appeal is sustained in the amount of \$2,222.26

28. ADDITIONAL WORK AT STATION 23+66

49. JC’s PCO 116 claimed an EA in the amount of \$5,576.48 and three days time extension for “Work Accomplished above and beyond change orders agreed to at Station 23+66. Change for rain damage to concrete thrust blocks. 3/31, 3/26, 3/19, 3/18, 3/12, 3/6, 2/13, 1986” (ex. A-8; E-R4, tabs 97, 120). The tie-in at station 23+66 was part of the new water system being installed and that JC performed changed work at this location. JC did not distinguish contract work from change order work for the seven days listed on PCO

116. JC's BREAKDOWN ESTIMATE OF DIRECT COSTS (for station 23+66 only) and ESTIMATE FOR CHANGE ORDER (as revised by the Board)<sup>20</sup> stated:

BREAKDOWN ESTIMATE OF DIRECT COSTS							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Laborer	9	13.85	124.65				
Benefits	9	5.72	51.48				
Operator	4	17.29	69.16				
Benefits	4	7.24	28.96				
Supervision	5	20.00	100.00				
Backhoe	4					30.00	120.00
Pickups	5					9.80	49.00
Office & Equipment	5					20.00	100.00
Wacker	5					2.50	12.50
Power Plant	5					2.50	12.50
Power Tools, Hand Tools, Etc.	5					20.00	100.00
4" 90° Ell	1			54.06	54.06		
4" 45° Ell	1			50.35	50.35		
4 MJ X FL Adaptor	1			58.30	58.30		
30" Spool	1			131.33	131.33		
4" Pipe	8			4.24	33.92		
Concrete	2			80.00	160.00		
Nuts, Bolts & Gaskets	3			11.66	34.98		
4" Collar	1			18.00	18.00		
Special Parts, Materials & Repairs	1			50.00	50.00		
<b>TOTAL</b>			374.25		590.94		394.00

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR'S WORK		
ITEM	COST	
Labor	\$293.81	
Fringe Benefits	80.44	
Material (incl. sales tax)	\$590.94	
Rental Equipment (incl. sales tax)	394.00	
<b>SUBTOTAL</b>		\$1,359.19
FIELD OVERHEAD (10% of subtotal)	135.92	
LIABILITY & COMPENSATION INS. (13% of labor cost)	38.20	
<b>SUBTOTAL</b>		\$1,533.31
HOME OFFICE OVERHEAD (3% of subtotal)	46.00	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	38.20	

TOTAL		\$1,617.51
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SUMMARY		
PRIME CONTRACTOR'S WORK	\$1,617.51	
PRIME CONTRACTOR'S PROFIT 6%	97.05	
SUBTOTAL		1,714.56
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	
TOTAL COST		\$1,714.56

Contractor Requests Three, (3), additional Calendar Days.

50. JC's certified payrolls for 13 February, 6, 12, 18, 19, 26 and 31 March 1986 stated the only employees working were salaried, laborers, and operator, Mr. Robert Clark, a salaried employee (ex. A-8).<sup>21</sup> At the quantum hearing JC, in support of its claim submitted DRIs for 13 February, 6, 12, 19, 26 and 31 March 1986 (*id.*). Upon review we find the DRIs for 19 and 26 March do not mention station 23+66 and the DRI for 18 March was not proffered. Although each of the remaining DRIs indicate work was performed at station 23+66, JC has not identified, and we are unable to distinguish, changed work from original contract work (finding 49 *supra*).

51. On 24 July 1986 the CO issued Modification No. P00052 wherein at item "1" it was reported that JC was being compensated for (E-findings 129-33; E-R4, tabs 97, 120):

Tie-in at station 23+63 [sic 66<sup>22</sup>] on Wright Avenue; provide and install 1-4" 90° bends, 1-4" 45° bend, 1-4" adaptor MJ X FL, 1-4"X30" spool, 1-4" collar, and 8 LF of 4" D.I. pipe.  
(PCO 116)

52. The GOVERNMENT'S ESTIMATE FOR DIRECT COSTS FOR CHANGE ORDERS for PCO 116 stated JC was entitled to payments of \$545 for 18.87 M/H of labor;<sup>23</sup> \$315 for material; and \$27 (5 percent of labor costs) for small tools, for a total EA of \$887 for the changed work performed at station 23+66 (E-R4, tab 97). Although Modification No. P00052 did not state an amount applicable for item "1" we conclude the CO did recommend payment of \$887 plus mark-ups, the amount reported on the Government's estimate (note 8 *supra*).

53. The Board's decision on entitlement sustained the appeal as to the changed work performed at station 23+66 but denied for lack of proof the thrust blocks portion of the appeal ( see note 20 *supra*).

54. The Government contends the claimed salaries for the salaried employees are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC's 10 percent field overhead mark-up (finding 15 *supra*). The

Government neither contends nor argues that any of the other claimed costs were duplicative of any cost otherwise recovered or included in “overhead.”

### DECISION

It is uncontested that station 23+66 would be tied into the new water system being installed under the contract and that JC performed changed work at station 23+66 (finding 49 *supra*). JC, having the burden of proving entitlement to an EA for performing changed work at station 23+66, submitted four DRIs as support for its claim and to meet its burden of proof (finding 50 *supra*; note 21 *supra*). However, the DRIs failed to distinguish changed work from original contract work, and the PCO only made a general statement that change work was performed at station 23+66. JC, failing to introduce evidence sufficient for us to determine what work performed during the seven days cited in PCO 116 was change work, has failed to prove a causal connection between the alleged costs incurred and the claimed event. *Triax-Pacific v. Stone, supra*; *DWS, Inc., supra*; *R.W. Contracting, Inc., supra*.

Under the circumstances the Board turns to the Government’s estimate for assistance in resolving the issue of how much, if any, extra costs JC incurred while performing uncompensated changed work. On its direct cost estimate for PCO 116 the Government computed the direct M/H cost for labor, at a rate of \$28.87 per M/H for 18.87 M/Hs, to be \$545 (finding 52). Since the Government neither provided evidence on how its M/H labor rate was derived nor reconciled the difference between its M/H labor rate and the M/H labor rate listed on the PCO and certified payrolls of \$19.57 (labor and benefits) for laborers, we accept JC’s PCO 116 rate as accurate. We accept the Government’s calculation that 18.87 M/H were expended to complete change work at station 23+66.

That JC performed changed work at station 23+66 is uncontested (finding 49 *supra*). Since JC failed to prove all of the work performed at station 23+66, on the seven days cited in PCO 1166, was change order work (finding 50 *supra*) we disallow the backhoe cost because of a lack of proof it was used solely for changed work. JC has also failed to prove it incurred additional costs due to having paid salaried employees, including the backhoe operator, wages over and above their salaries or that the additional compensation allegedly paid to salaried employees was not include in the allocated 10 percent field overhead mark-up (finding 13-15 and Discussion *supra*). Recovery of these costs are disallowed.

We accept JC’s material prices since they are more in line with agreed to prices for the same or similar items reached during negotiations for bilaterally executed modifications (finding 11a *supra*). We allocate for equipment costs 10 percent of labor costs except for the backhoe which we disallow (finding 11b *supra*).

The Board determines JC’s EA for additional work performed at station 23+66 is:

ITEM	COST	
LABOR (18.87 M/H @ \$13.85 per M/H)	\$261.35	
FRINGE BENEFITS (18.87 M/H @ \$5.72 per M/H)	107.94	
SUPERVISION (SALARIED EMPLOYEE)	0	
Operator (salaried employee)	0	
MATERIAL (incl. sales tax)	590.94	
BACKHOE	0	
EQUIPMENT (10% of labor costs)	26.14	
SUBTOTAL		\$986.37
FIELD OVERHEAD (10% of subtotal)	98.64	
LIABILITY & COMPENSATION INS. (13% of labor cost)	33.98	
SUBTOTAL		\$1,118.99
HOME OFFICE OVERHEAD (3% of subtotal)	33.57	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	33.98	
PRIME CONTRACTOR'S WORK		\$1,186.54
PRIME CONTRACTOR'S PROFIT 6%	71.19	
SUBTOTAL		1,257.73
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	25.15	
TOTAL COST		\$1,282.88

JC's appeal is sustained in the amount of \$1,282.88

29. ADDITIONAL WORK AT STATION 29+70

55. JC's PCO 112 claimed an EA in the amount of \$5,837.52, less a credit of \$2,043.61 and three days time extension for "Work Accomplished above and beyond change orders agreed to Station 29+70" (ex. A-9; E-R4, tabs 97, 121). It is uncontested that station 29+70 was to be tied into the new water system being installed and that JC performed changed work at that station. However, JC's did not distinguish change order work from original contract on the days cited in PCO 112. JC's BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated:

BREAKDOWN ESTIMATE OF DIRECT COSTS									
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT		CREDIT TO GOVERNMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNITS	
Labor	40	13.85	554.00					4	55.40
Benefits	40	5.72	228.88					4	22.80
Operator	20	17.29	345.80					2	34.58
Benefits	20	7.24	144.80					2	14.48
Supervision	20	20.00	400.00					0	0
Parts Runner	4	22.50	90.00					0	0
Pickup	0					9.80	0	4	39.20
Backhoe	20					30.00	600.00	2	60.00
2 Pickups 20 hrs. ea.	40					9.80	392.00	2	19.60

Wacker	20					2.50	50.00	1	2.50
Power Plant	20					2.50	50.00	1	2.50
Welder	20					8.00	160.00	0	0
Power and Hand, Tools & Etc	20					20.00	400.00	1	20.00
Power Saw	20					10.00	200.00	1	10.00
3" X 2" Reducer	1			28.62	28.62			0	0
3" Pipe	0			7.27	0			10	72.70
2" Pipe	27			3.28	88.56			0	0
2" 90° Bend	4			2.44	9.76			0	0
2" 45° Bend	2			2.97	5.94			0	0
3" Meter	0			655.93	0			1	655.93
2" Meter	1			432.48	432.48			0	0
3" Gate Valve	0			132.92	0			1	132.92
2" Gate Valve	1			78.18	78.18			0	0
3" Meter Box	0			901.00	0			1	901.00
2" Meter Box	1			198.22	198.22			0	0
2" Dressler Coupling	2			14.84	29.68			0	0
Misc. Material & Repair	1			50.00	50.00			0	0
TOTAL			1763.48		921.44		1,852.00		2,043.61

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	1,389.80	
FRINGE BENEFITS	373.68	
MATERIAL (incl. sales tax)	921.44	
RENTAL EQUIPMENT (incl. sales tax)	1,852.00	
SUBTOTAL		4,536.92
FIELD OVERHEAD (10% of subtotal)	453.69	
LIABILITY & COMPENSATION INS. (13% of labor cost)	180.67	
SUBTOTAL		5,171.28
HOME OFFICE OVERHEAD (3% of subtotal)	155.14	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	180.67	
TOTAL		\$5,507.09

SUMMARY		
PRIME CONTRACTOR'S WORK	\$5,507.09	
PRIME CONTRACTOR'S PROFIT 6%	330.43	
SUBTOTAL		\$5,837.52
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	
TOTAL COST		\$5,837.52
TOTAL CREDIT		\$2,043.61

Request Three (3) additional Calendar Days

56. At the quantum hearing JC, to support of its claim, submitted DRIs for 10, 11, 12, 13, 14, 15, 17 March and 1, 2 April 1986. DRIs for 11, 12, 13, March do not mention work being performed at station 29+70. DRIs for 10, 14, 15, 17 March and 1, 2 April mention work being performed at station 29+70 but did not denote the work as either change order work or original contract work (ex. A-9; tr. 2/133; finding 55 *supra*). JC on its 15 March 1986 DRI stated:

Carl worked on tie-in at Station 29+70 on Q.R., but couldn't make tie-in because no way to shut off water. He had to reduce from 3" to 2" as the existing line is 2", but the plans show 3" of which we installed a 3" gate valve at the time of main line installation. . . .

57. JC's certified payrolls for the dates cited in PCO 112 stated the only employees working were salaried, laborers, or operators. The operators were Mr. Robert Clark, a salaried employee, and Mr. Tim Smith, a laborer. The certified payrolls did not identify an employee as a "parts runner" who, Ms. Butler testified, was not a recognized classification by the DOL and was something usually performed by a salaried employee (ex. A-9; tr. 2/199-200). Neither did the certified payrolls or the DRIs clarify whether Mr. Smith, when working as an operator, was working on changed work.

58. The GOVERNMENT'S ESTIMATE FOR DIRECT COSTS FOR CHANGE ORDERS for PCO 112 stated JC was entitled to payments of \$88 for 3.05 M/H of labor,<sup>24</sup> \$83 for material and \$5 (5 percent of labor costs) for small tools, for a total EA for the direct cost for the added work performed at station 29+70 of \$176.00 (E-R4, tab 97). On 24 July 1986 the CO issued Modification No. P00052 wherein at item "h" it was reported that JC was being compensated for:

Tie-in at station 29+70 on Quentin Roosevelt. Provide and install 3" X 2" reducer and a 2" dresser type coupling [to connect to an odd size pipe]. (PCO 112)"

We have determined that the reducer and dresser type coupling constituted a changed requirement and that JC expended 3.05 M/H to complete the hook-up. Although Modification No. P00052 did not state an amount applicable for item "h" we conclude the CO did recommend payment of \$176 plus mark-ups, the amount reported on the Government's estimate (E-finding 139-40; E-R4, tabs 97, 121; findings 55-56 *supra*; note 8 *supra*;) )

59. The Government contends the claimed salaries for the salaried employees are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC's 10 percent field overhead mark-up (finding 15 *supra*). The

Government neither contends nor argues that any of the other claimed costs were duplicative of any costs otherwise recovered or included in “overhead.”

### DECISION

It is uncontested by JC that station 29+70 was to be tied into the new water system being installed under contract A805 (finding 55 *supra*). We have consistently held that under these circumstances JC had the burden of proving the work performed over a period of several days was change order work and not original contract work. In the instant appeal, JC has provided the DRIs for 10, 11, 12, 13, 14, 15, 17 March and 1, 2 April 1986 in support of its claim (finding 56 *supra*). However, the DRIs for 11, 12, 13 March make no mention of station 29+70 and, accordingly, are determined to be irrelevant (*id.*). DRIs for 10, 14, 17 March and 1, 2 April mention work being performed at station 29+70 but JC has not provided relevant proof sufficient for us to conclude there was a causal connection between the alleged increase costs and the claimed event, *i.e.*, the performance of work at station 29+70 on the days cited was changed work and not original contract work. *Triax-Pacific v. Stone, supra; DWS, Inc. supra; R.W. Contracting, Inc., supra*. However, the 15 March DRI indicated a changed condition, similar to that which the Government acknowledges in Modification No. P00052 at item “h”, was encountered (findings 56, 58 *supra*).

Since JC failed to denote when changed work was performed we turn to the Government’s estimate where we find the Government computed the direct cost for labor, at a rate of \$28.87 per M/H for 3.05 M/Hs to be \$88.00, and the material costs to total \$83.00 (finding 58). Because the Government neither provided evidence on how its M/H labor rate was computed nor attempted to reconcile the difference between its M/H rate and the M/H rate listed on PCO 112 and certified payroll of \$19.75 for laborers we accept JC’s PCO rate as accurate.

We are hard pressed to reconcile the Government’s estimates with JC’s estimated of \$1,763.48 for labor and \$921.44 for materials. The crux of the problem encountered, as stated by JC on its 15 March DRI, was the need to reduce from 3” to 2” the tie-in between the main line and station 29+70 (finding 56 *supra*). Since JC failed to introduce evidence sufficient for us to conclude all the claimed material was needed to complete the tie-in, we find JC’s alleged costs for material and the alleged labor necessary to complete the tie-in unreasonable. We accept the Government’s calculation that 3.05 M/Hs were expended to complete changed work at station 29+70. We do find that the claimed 45° and 90° bends and 2” pipe (less the credit for the 3” pipe) were needed to make the tie-in. (Findings 11b, 55, 58, *supra*) We allow recovery of these costs and allocate 10 percent of labor costs for equipment.

We disallow recovery of JC’s claimed alleged additional cost paid salaried employees over and above their salaries because JC has failed to prove it paid such alleged

additional cost, including Mr. Clark, or that the alleged additional compensation was not included in the allocated 10 percent field overhead mark-up (finding 13-15 and Discussion *supra*). We also disallow JC’s claim for reimbursement for the use of the backhoe and Mr. Smith’s remuneration as the operator because of a lack of proof the backhoe was used for changed work (finding 56, 57 *supra*).

The Board finds JC entitled to the following EA for the additional work performed at station 29+70 on 15 March 1986:

ITEM	COST	
LABOR (3.05 M/H @ \$13.85 per M/H)	\$42.24	
FRINGE BENEFITS (3.05 M/H @ \$5.72 per M/H)	17.45	
SUPERVISION (SALARIED EMPLOYEE)	0	
OPERATOR (SALARIED EMPLOYEE)	0	
MATERIAL (incl. sales tax) <sup>25</sup>	28.59	
BACKHOE	0	
EQUIPMENT (10% of labor costs)	4.22	
SUBTOTAL		\$92.41
FIELD OVERHEAD (10% of subtotal)	9.24	
LIABILITY & COMPENSATION INS. (13% of labor cost)	5.49	
SUBTOTAL		\$107.14
HOME OFFICE OVERHEAD (3% of subtotal)	3.21	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	5.49	
PRIME CONTRACTOR’S WORK		\$115.84
PRIME CONTRACTOR’S PROFIT 6%	6.95	
SUBTOTAL		\$122.79
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	2.46	
TOTAL COST		\$125.25

JC’s appeal is sustained in the amount of \$125.25.

30. ADDITIONAL WORK AT ½” LINE ON CURTIS ROAD

60. JC’s submittal No. 63 claimed an EA in the amount of \$2,063.26, less a credit of \$463.61 and three days time extension for “Change Orders request for tie-in #65 on Curtis Road ½” Line” (ex. A-10; E-R4, tabs 122, 278). It is uncontested tie-in #65 was part of the new water system being installed and that JC performed changed work at that location. JC’s submittal No. 63 neither expressed nor defined when change order work or original contract work was performed for tie-in #65 on Curtis Road ½” Line. JC’s BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (ex. A-10):

BREAKDOWN ESTIMATE OF DIRECT COSTS				
	LABOR	MATERIAL	EQUIPMENT	CREDIT TO GOVERNMENT

ITEM OF WORK	NO. OF UNITS	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNITS	TOTAL CREDIT
Laborer	18	13.85	249.30					6	83.10
Benefits	18	5.72	102.96					6	34.32
Operator	6	17.29	103.74					2	34.58
Benefits	6	7.24	43.44					2	14.48
Supervision	6	20.00	120.00					2	40.00
Parts Runner	2	22.50	45.00					0	0
Backhoe	6					30.00	180.00	2	60.00
2 Pickups	12					9.80	117.60	2	19.60
Office & Equipment	6					20.00	120.00	2	40.00
Jackhammer & Air Compressor	6					20.00	120.00	2	40.00
Wacker	6					2.50	15.00	2	5.00
Power Plant	6					2.50	15.00	2	5.00
Water Pump	6					2.50	15.00	2	5.00
Power Saw	6					10.00	60.00	2	20.00
Hand & Power Tools	6					20.00	120.00	2	40.00
1" X 1/2" Saddle Reducer	0			2.53	0			1	2.53
8" x 1" Saddle	1			44.15	44.15			0	0
1/2" Copper Pipe	0			1.06	0			8'	8.43
1" Copper Pipe	12'			1.17	14.04			0	0
1/2" Corp Stop	0			7.93	0			1	7.93
1" Corp Stop	1			11.13	11.13			0	0
1" Flare Nut	2			5.08	10.16			0	0
1/2" Brass Coupling	0			3.59	0			1	3.59
1" x 5/8" Reducer	1			8.27	8.27			0	0
5/8" Flare Nut	1			2.52	2.52			0	0
Concrete	1			80.00	80.00			1/2	40.00
TOTAL			664.44		170.27		762.60		503.56 <sup>26</sup>

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	518.04	
FRINGE BENEFITS	146.40	
MATERIAL (incl. sales tax)	170.27	
RENTAL EQUIPMENT (incl. sales tax)	762.60	
SUBTOTAL		\$1,597.31
FIELD OVERHEAD (10% of subtotal)	159.73	
LIABILITY & COMPENSATION INS. (13% of labor cost)	67.35	
SUBTOTAL		\$1,824.39
HOME OFFICE OVERHEAD (3% of subtotal)	54.73	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	67.35	

TOTAL		\$1,946.47
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Summary		
PRIME CONTRACTOR'S WORK	\$1,946.47	
PRIME CONTRACTOR'S PROFIT 6%	116.79	
		\$2,063.26
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	
TOTAL COST		\$2,063.26
TOTAL CREDIT		\$463.61

Contractor requests 3 Additional calendar days.

61. JC at the quantum hearing, to support its claim, submitted DRIs for the dates 11, 14, 16 April 1986 which stated in pertinent part (ex. A-10, -11):

11 April 1986 –

. . . Scott and Raul . . . installed 8 x 1” tapping sleeve and gate valve at ½” tie-in on Curtis Road (1 hr.). . . .

14 April 1986 --

. . . Scott and Bobby and Carl did tie-in #65 ½” at Curtis Road, Scott 1 hr., Bobby and Carl 2 hrs. It was necessary to complete this tie-in as when we were excavating to make room for tapping machine we hit the existing line and broke it. The plans say its a ½” line but in fact it is a 5/8” line and Carl had to go get additional parts. . . .

16 April 1986 --

We . . . filled & compacted tie-in #65 on Curtis Rd. 4 hrs.  
Mike (inspector) looked at it with Carl and oked [sic]  
backfill. . . .

62. JC’s certified payrolls stated the only employees working on 11, 14, 16 April 1986 were salaried, laborers, or operator, Mr. Robert Clark, a salaried employee (ex. A-10.). The DRIs indicated work was performed at tie-in No. 65 on Curtis Road ½” line but JC has not, and we are unable to, distinguish changed work from original contract work (finding 60 *supra*).

63. JC’s 24 April 1986 letter to the ROICC addressing “Change Order request #63, Tie-in #65 on Curtis Road ½” line” stated (E-R4, tab 122):

This change order request is necessitated because of the fact that when the existing line was exposed it was a 5/8" instead of a 1/2" line as the plans call for. Therefore, we had to install a 8"x1" DS Saddle and run a 1" line to the existing 5/8" line. We also had to run after reducers and 5/8" couplers as we already had 1/2" material on hand. We had additional excavating, backfill and concrete because the existing line had been kinked in several places and we had to excavate until we found suitable line to tie into.

This tie-in was accomplished on an emergency basis, as we hit and broke the existing line due to the fact it was laid directly under the asphalt instead of being buried in the ground.

64. The Government does not dispute JC's contention that changed work was performed at tie-in #65 on Curtis Road 4" line. The Government did not proffer an estimate of direct costs for changed work and none was found in the record. Accordingly, the Board finds JC's 14 April DRI and 24 April 1986 letter to be an accurate description of the encountered condition at tie-in #65 on Curtis Road 4" line and the labor and material necessary to correct the condition reasonable (findings 61, 63 *supra*). The Government did not introduce evidence addressing how the CO's final decision on the tie-in #65 on Curtis Road 4" line was derived. The CO's final decision stated (E-R4, tab 149):

The contracting officer finds merit in this part of your claim. It is determined that \$875.00 is a fair and reasonable price for this work. By copy of this letter, the ROICC is directed to issue a unilateral modification which includes this amount, plus CDA interest from July 21, 1988 until the projected date of payment.<sup>[27]</sup>

65. The Government contends the claimed salaries of the salaried employees are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC's 10 percent field overhead mark-up (finding 15 *supra*). The Government neither contends nor argues that any of the other claimed costs were duplicative of any costs otherwise recovered or included in "overhead."

### DECISION

The Government has not put forth any evidence, *i.e.*, an estimate of direct costs or other documentation, addressing either JC's 24 April 1986 letter or how the CO reached his decision (finding 64 *supra*). JC's 14 April DRI and its 24 April 1986 letter is sufficient probative evidence of the changed condition that was encountered and the amount of labor and material JC needed to correct the condition (finding 63 *supra*). Accordingly, we

accept JC’s submittal No. 63 as the best evidence of labor and material costs incurred to perform the changed work. However, JC has failed to prove it incurred additional costs due to having paid its salaried employees, including the backhoe operator, wages over and above their salaries or that any alleged additional compensation paid to salaried employees was not included in the 10 percent field overhead mark-up (findings 13-15 and Discussion, 62 *supra*). Recovery of these costs is disallowed. The Board accepts the M/H, labor, and fringe benefit costs cited on JC’s submittal No. 63. The Board will allocate 10 percent of labor costs for equipment costs except for the backhoe which will be allocated at \$21.70 per M/H. A deduction of the uncontroverted credit will be taken from JC’s EA.<sup>28</sup> The Board finds JC’s EA entitlement for the additional work performed at tie-in #65 on Curtis Road ½” line is:

ITEM	COST	
LABOR (18 M/H @ \$13.85 per M/H less credit of \$83.10)	\$166.20	
FRINGE BENEFITS (18 M/H @ \$5.72 per M/H less credit of \$34.32)	68.64	
OPERATOR (SALARIED EMPLOYEE)	0	
SUPERVISION (SALARIED EMPLOYEE)	0	
MATERIAL (incl. sales tax) (\$170.27 minus credit of \$59.95)	110.32	
BACKHOE (6 M/H @ \$21.70 per M/H less credit of \$60.00)	70.20	
EQUIPMENT (10% of labor costs of \$235.36 <sup>29</sup> )	23.54	
SUBTOTAL		\$438.90
FIELD OVERHEAD (10% of subtotal)	43.89	
LIABILITY & COMPENSATION INS. (13% of labor cost of \$235.36)	30.60	
SUBTOTAL		\$513.39
HOME OFFICE OVERHEAD (3% of subtotal)	15.40	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	30.60	
PRIME CONTRACTOR’S WORK		\$559.39
PRIME CONTRACTOR’S PROFIT 6%	33.56	
SUBTOTAL		\$592.95
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	11.86	
TOTAL COST		\$604.81

JC’s appeal is sustained in the amount of \$604.81.

31. ADDITIONAL WORK AT STATION 14+29

66. JC’s submittal No. 65 claimed an EA in the amount of \$3,572, less a credit of \$1,086.53 and four days time extension for “Change Orders Request Station 14+29 Q. R. 2” Lateral” (ex. A-11; E-R4, tabs 123, 278). It is uncontested that station 14+29 Q.R. was to be tied into the new water system being installed or that JC performed changed work at that station. JC’s BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (ex. A-11):

BREAKDOWN ESTIMATE OF DIRECT COSTS
------------------------------------

ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT		CREDIT TO GOVERNMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNITS	TOTAL CREDIT
Labor	32	13.85	443.20					8	110.80
Benefits	32	5.72	183.04					8	45.76
Operator	10	17.29	172.90					5	86.45
Benefits	10	7.24	72.40					5	36.20
Supervision	20	20.00	400.00					5	100.00
Pickup	20					9.80	196.00	5	49.00
Parts Runner	4	22.50	90.00					2	45.00
Pickup	4					9.80	39.20	2	19.60
Backhoe	10					30.00	300.00	5	150.00
Office & Equipment	10					20.00	200.00	5	100.00
Hand & Power Tools & Etc.	10					20.00	200.00	5	100.00
Air Compressor & Jackhammer	10					20.00	200.00	5	100.00
Wacker	10					2.50	25.00	5	12.50
Power Plant	10					2.50	25.00	5	12.50
2" Pipe	37			3.71	137.27			32	118.72
2" 90° Brass Ells	2			9.15	18.30			0	0
2" Meter Flange	1			14.71	14.71			0	0
<b>TOTAL</b>			1,361.54		170.28		1,185.20		1,086.53

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	\$1,106.10	
FRINGE BENEFITS	255.44	
MATERIAL (incl. sales tax)	170.28	
RENTAL EQUIPMENT (incl. sales tax)	1,185.20	
SUBTOTAL		\$2,717.02
FIELD OVERHEAD (10% of subtotal)	271.70	
LIABILITY & COMPENSATION INS. (13% of labor cost)	143.79	
SUBTOTAL		\$3,132.51
HOME OFFICE OVERHEAD (3% of subtotal)	93.98	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	143.79	
<b>TOTAL</b>		<b>\$3,370.28</b>

SUMMARY		
PRIME CONTRACTOR'S WORK	\$3,370.28	
PRIME CONTRACTOR'S PROFIT 6%	202.22	
SUBTOTAL		\$3,572.50
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	
<b>TOTAL COST</b>		<b>\$3,572.50</b>
<b>TOTAL CREDIT</b>		<b>\$1,086.53</b>
Contractor Requests four, (4), additional calendar days.		

67. JC at the quantum hearing submitted, in support of its claim, the following DRIs which stated in pertinent part (ex. A-11; E-R4, tab 226):

22 March 1986

L.R Hubbard had two men on the job sawing today . . . at Station 14+29 on Q. R. . . .

10 April 1986

Raul and Danny closed Q.R at Station 14+29 at 6:00, jackhammered and excavated crossing, at 11:30 George had us backfill for 1/2 hr. Raul and Danny continued digging at 14+29 to get the tie in ready, in all, they worked 8 hrs. each at this station and Bobby for 1/2 hr.

Mr. Mulligan, the Government's inspector, in the CONSTRUCTION REPRESENTATIVE'S REMARKS AND OR EXCEPTIONS TO THIS REPORT, stated in pertinent part:

Dan Smith closed QR Blvd. at 0800, not 0600. Only Raul at Sta. No. 14+29 QR, started trenching in order to lay 2" cu pipe within a 4 hour outage time frame (0800-1200). At 1130 had to close trench as no evidence of preparation to install pipe evident. No pipe or fittings were not [sic] purchased yet according to supt. Bob Clark.

Carl Bybee called me and stated he never was told of 4 hour outage limitation for sta. No. 14+29 QR. Not true, he was informed on 4/7/86 Monday

11 April 1986

Mr. Mulligan, the Government's inspector, in the CONSTRUCTION REPRESENTATIVE'S REMARKS AND OR EXCEPTIONS TO THIS REPORT, stated in pertinent part:

. . . .

(4) Walked pipe line w/Jim Pawlish & Carl Bybee.

. . . .

(6) Made out new road outage for Sta. No. 14+29 QR.  
Notified police, fire, & medical. Staff civil also aware.

....

(7) Site 1 - Dan Smith at Sta. No. 14+29 QR.

12 April 1986

Danny started excavation at Station 14+29 on Q.R. at 8:00, Bobby helped him. They continued excavating until 10:30. Carl and Carol gathered parts for tie-in at station 14+29 and started making tie-in. Tie-in completed at 2:00 p.m., when George Mulligan said it had to be tested to 200 PSI. We broke for lunch and Danny jackhammered at hobby shop 1½ hrs. George then said we could backfill 14+29 without test. Bobby, Carl and Danny backfilled and compacted trench.

16 April 1986

Danny . . . dug out and prepared for tie-in at station 14+29 Q. R.  
2 hrs. . . .

17 April 1986

Bobby & Carl did tie-in at Station 14+29 on Q.R from 5:30  
a.m. till 7:30 a.m. . . .

26 April 1986

. . . Raul prepared for concrete at Station 14+29 on Q.R. . . .

27 April 1986

. . . Scott & Danny worked on clean-up on Q.R. and worked . . .  
2 hrs. on Station 14+29 backfilling and clean-up.

68. JC's certified payrolls indicated the only employees working on 22 March, and 10, 11, 12, 16, 17, 26, 27 April 1986 were salaried, laborers or an operator, Mr. Robert Clark, who was a salaried employee (ex. A-11). Although the DRIs indicated work was performed at station 14+29, JC has not distinguished, and we are unable to distinguish, changed work from original contract work (finding 67 *supra*).

69. JC, in its 25 April 1986 letter to the ROICC, addressing the change order request for station 14+29 stated (E-R4, tab 123):

On April 5, 1986, a request was made to George Mulligan for permission to close Quentin Roosevelt on Monday, April 7, 1986, in order to complete the referenced tie-in. Mr. Mulligan informed me on April 7th that the road closure was for Thursday, April 10, 1986. At 6:00 a.m. we closed the road, jackhammered and excavated for the lateral and at 11:30 Mr. Mulligan informed us that we had to close the road as it could not be left open. This caused us to have twice as much excavation and backfill, as would have been required. There was also additional pipe and fittings, as the existing 12" line was considerably deeper than the lateral line.

70. The Government does not dispute JC's contention that changed work was performed at station 14+29 (finding 66 *supra*). The AROICC in his 29 April 1986 letter to JC stated (E-R4, tab 123):

. . . Once the scope of additional work is determined for station 14+29 Quentin Roosevelt . . . a request for proposal will be forwarded to your firm. You are directed not to cut and cap the existing line at . . . station 14+29 on Quentin Roosevelt until further notice. . . .

71. The CO in his final decision addressing the Curtis Road, *i.e.*, station 14+29, tie-in stated (E-R4, tab 149):

The contracting officer finds merit in this part of your claim. It is determined that \$1,186.00 is a fair and reasonable price for this work. By copy of this letter, the ROICC is directed to issue a unilateral modification which includes this amount, plus CDA interest from July 21, 1988 until the projected date of payment.

72. The Government contends the claimed salaries for the salaried employees, including the operator, Mr. Clark, are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC's 10 percent field overhead mark-up (findings 15, 68 *supra*). The Government neither contends nor argues that any of the other

claimed costs were duplicative of any costs otherwise recovered or included in “overhead.” The Government does not dispute appellant’s entitlement to \$1,186. (Govt. br. at 7-8).

DECISION

The record on station 14+29 is a maze of contradictions which neither party has elected to shed light on. JC’s DRI for 12 April 1986 reports the tie-in at station 14+29 is completed and the station backfilled and tested (finding 67 *supra*). JC’s DRI for 17 April 1986, for the second time, reported the tie-in at station 14+29 was again completed and on 27 April backfilling was completed (*id.*). The Board, unable to reconcile these discrepancies, questions the credibility and accuracy of JC’s submittal No. 65.

JC, having the burden of proof, has failed to meet this burden except as to the undisputed amount of \$1,186.00. As this amount is not disputed, the Board determines JC’s EA entitlement for additional work at station 14+29 is \$1,186.00 (finding 72, *supra*).

JC’s appeal is sustained in the amount of \$1,186.00

33. ADDITIONAL WORK AT TIE-IN #15

73. JC’s submittal No. 71 claimed an EA in the amount of \$2,135.35 and two days time extension for “Change Order Request for Tie-in #15, Q. R. as per Walk Through on January 10, 1986. April 30, 1986” (ex. A-12; E-R4, tab 126). The tie-in # 15 was part of the new water system being installed and JC performed changed work at this location. JC’s BREAKDOWN ESTIMATE OF DIRECT COSTS AND ESTIMATE FOR CHANGE ORDER stated (ex. A-12):

BREAKDOWN ESTIMATE OF DIRECT COSTS							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
Tie-In # 15 Q.R.		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Labor	16	13.85	221.60				
Benefits	16	5.72	91.52				
Operator	8	17.29	138.32				
Benefits	8	7.24	57.92				
Supervision	8	20.00	160.00				
Backhoe	8					30.00	240.00
2 Pickups 8 hr. ea.	16					9.80	156.80
Air Compressor & Jackhammer	8					20.00	160.00
Dump Truck [sic]	8					13.85	110.80
Hand & Power Tools	8					20.00	160.00
Office & Equipment	8					20.00	160.00
TOTAL			669.36				987.60

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	\$519.92	
FRINGE BENEFITS	149.44	
MATERIAL (incl. sales tax)	0	
RENTAL EQUIPMENT (incl. sales tax)	987.60	
SUBTOTAL		\$1,656.96
FIELD OVERHEAD (10% of subtotal)	165.69	
LIABILITY & COMPENSATION INS. (13% of line 1)	67.57	
SUBTOTAL		\$1,890.22
HOME OFFICE OVERHEAD (3% of subtotal)	56.70	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of line 1)	67.57	
TOTAL		\$2,014.49

SUMMARY		
PRIME CONTRACTOR'S WORK	\$2,014.49	
PRIME CONTRACTOR'S PROFIT 6%	120.86	
SUBTOTAL		2,135.35
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	
TOTAL COST		\$2,135.35

Contractor Requests Two (2) Additional Calendar Days.

74. JC's 20 May 1986 letter to the ROICC stated (E-R4, tab 126):

REFERENCE: Change Order Request for Tie-In #15, Q.R. as per Walk Through on January 10, 1986.

This extra work was caused by the Navy paving this parking lot after we had our main line run and all new gate valves and tie-in line exposed and before the Navy would give us instructions on how to make the tie-in on this line as the original plans would not work.

When jackhammering this area, we encountered 6" to 8" thick asphalt to jackhammer and remove.

75. Although tie-in #15 was never identified at the entitlement hearing from the record we determined it was the work performed on 30 April 1986 at station 2+73 (finding 74 *supra*; finding E-148-49). The Government does not dispute JC's contention that additional work was performed at tie-in #15 (finding 73 *supra*). The CO, addressing tie-in #15, in his final decision stated (E-R4, tab 149):

The contracting officer finds entitlement for work that was not included in modification P00040. It is determined that \$739.00 is a fair and reasonable price for this work. By copy of this letter, the ROICC is directed to issue a unilateral modification which includes this amount, plus CDA interest from July 21, 1988 until the projected date of payment.

76. The Government contends the claimed salaries of the salaried employees are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC's 10 percent field overhead mark-up (finding 15 *supra*). The Government neither contends nor argues that any of the other claimed costs were duplicative of any costs otherwise recovered or included in "overhead."

77. The Board's entitlement decision found that JC "failed to offer substantive evidence that it incurred additional costs for any work over and above the jack-hammering and digging out of the hole to make the tie-in at #15" (*J.C. Corporation, supra* at 145,279-80). Although it is apparent the backhoe was used to make tie-in #15, JC has failed to introduce certified payroll records or other documentation identifying the operator and, accordingly, JC has failed to prove the operator's M/Hs are recoverable. Mr. Mulligan, the Government's inspector, in his Construction Representative's Remarks on the 30 April 1986 DRI noted that JC listed two pickups but only has one. Mr. Mulligan made no other exception regarding the equipment listed by JC, *i.e.*, 510 backhoe, wacker, office & equipment, water pump, air compressor, jackhammer, power plant, tool, etc. (ex. A-12). Accordingly, we find appellant employed the backhoe and rental equipment in performing changed work. We find appellant's estimate of 16 M/H for labor reasonable for executing the tie-in (*see* finding 73 *supra*).

### DECISION

JC's recovery is limited to the jack-hammering, digging, and removal of the concrete to make the tie-in. Since the Government has failed to provide evidence on how it reached its estimate, the Board accepts JC's 16 labor M/H as reasonable.

JC has failed to prove it incurred additional costs due to having paid salaried employees, including the backhoe operator, wages over and above their salaries or that the alleged additional compensation paid to salaried employees was not included in the 10 percent field overhead mark-up (findings 13-15 and Discussion, 77 *supra*). Recovery of these costs is disallowed.

We disallow JC's alleged cost for a dump truck, since there is none listed on the 30 April 1986 DRI leaving us to conclude that none was at the site on 30 April. We allocate 10 percent labor costs to compensate for equipment costs except for the backhoe which we

apply a M/H cost of \$21.70 (finding 11b *supra*).. The Board finds JC entitled to the following EA for the additional work performed at tie-in #15:

ITEM	COST	
LABOR (16 M/H @ \$13.85 per M/H)	\$221.60	
FRINGE BENEFITS (16 M/H @ \$5.72 per M/H)	91.52	
SUPERVISION (SALARIED EMPLOYEE)	0	
OPERATOR (SALARIED EMPLOYEE)	0	
BACKHOE (8 M/H @ \$21.70 per M/H)	173.60	
EQUIPMENT (10% of labor cost)	22.16	
SUBTOTAL		\$508.88
FIELD OVERHEAD (10% of subtotal)	50.89	
LIABILITY & COMPENSATION INS. (13% of labor cost)	28.81	
SUBTOTAL		\$588.58
HOME OFFICE OVERHEAD (3% of subtotal)	17.66	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	28.81	
PRIME CONTRACTOR'S WORK		\$635.05
PRIME CONTRACTOR'S PROFIT 6%	38.10	
SUBTOTAL		\$673.15
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	13.46	
TOTAL COST		\$686.61

JC's appeal is sustained in the amount of \$686.61.

35. ADDITIONAL WORK AT TIE-IN BUILDING 307

78. JC's PCO 109 claimed an EA of \$3,560.85 and two days time extension for "Changes Order Request for Tie-in at Building 307" (ex. A-13; E-R4, tabs 128, 251). The tie-in at building 307 was part of the new water system being installed and JC performed changed work at this location. JC's BREAKDOWN ESTIMATE FOR DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (ex. A-13):

BREAKDOWN ESTIMATE OF DIRECT COSTS							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Labor	17.5	13.85	242.37				
Benefits	17.5	5.72	100.10				
Operator	8.75	17.29	151.28				
Benefits	8.75	7.24	63.35				
Supervision	8.75	20.00	175.00				
Air Compressor & Jackhammer	17.5					20.00	350.00
Power and Hand Tools, Etc.	17.5					20.00	350.00
Pickups 2 at 8.75 hr. ea.	17.5					9.80	171.50
Backhoe	8.75					30.00	262.50

Flatbed Dump Truck	3					13.85	41.55
Office & Equipment	8.75					20.00	175.00
Power Plant	8					2.50	20.00
Wacker	4					2.50	10.00
Hand Tools, Power Tools, Etc.	8					20.00	160.00
Welder	8					8.00	64.00
Concrete	1			80.00	80.00		
Soder & Bends & Misc. Mat. & Equipment	1			25.00	25.00		
2" Copper Pipe	43			9.09	390.87		
TOTAL			732.10		495.87		1,604.55

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	\$568.65	
FRINGE BENEFITS	163.45	
MATERIAL (incl. sales tax)	\$495.87	
RENTAL EQUIPMENT (incl. sales tax)	1,604.55	
SUBTOTAL		\$2,832.52
FIELD OVERHEAD (10% of subtotal)	283.25	
LIABILITY & COMPENSATION INS. (13% of line 1)	73.92	
SUBTOTAL		\$3,189.69
HOME OFFICE OVERHEAD (3% of subtotal)	95.69	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of line 1)	73.92	
TOTAL		\$3,359.30

SUMMARY		
PRIME CONTRACTOR'S WORK	\$3,359.30	
PRIME CONTRACTOR'S PROFIT 6%	201.55	
SUBTOTAL		3,560.85
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	
TOTAL COST		\$3,560.85

Contractor Requests Two, (2), Additional Calendar Days.

79. Mr. Bybee in his 20 May 1986 letter, to the Government referencing the change order request for tie-in at building 307, stated (ex. A-13):

This is extra work above and beyond the agreed on work during the January 10, 1986 walk through. This work was caused because the existing line was much deeper than the 4' anticipated by both the Government and the contractor during the January 10, 1986 walk through. This work was accomplished on the following dates:

4/22, 4/13, 4/11, 4/7, 4/2, 3/28, 3/25, 3/24, 3/22, 1986

80. JC's certified payrolls for 22, 24, 25, 28 March, and 2, 7, 11, 13, 22 April 1986 indicated the only employees working were salaried, laborers, or an operator, Mr. Robert Clark, a salaried employee (ex. A-13). JC at the quantum hearing, in support of its claim, submitted DRIs for 22, 24, 25, 28, and 29 March and 2, 7, 8, 9, 10, 11, 13, and 22 April 1986. We accept Mr. Bybee's 20 May 1986 letter, uncontested by the Government, as an accurate accounting of why the extra work was needed and, although the cited DRIs indicate work was performed at building 307, JC failed to distinguish changed work from original contract work. Mr. Mulligan, noting JC's DRIs listed anywhere from one to three pickup trucks at the site, remarked that JC had only one truck, and one truck was owned by Bob Clark who was not being paid by JC for its use. Mr. Mulligan does not dispute and we find from a review of JC's DRIs for 25, 28, March, 2, 7, 11 April 1986 that a 2 1/2-ton flatbed truck was at the job site. (Ex. A-13; E-R4, tabs 97, 128, 149)

81. The GOVERNMENT'S ESTIMATE FOR DIRECT COSTS FOR CHANGE ORDERS for PCO 109 stated JC, for additional work performed at the tie-in at building 307, was entitled to payment of \$430.00 for a total of 19 M/H of labor; \$100.00 for material; and \$479.00, itemized for individual pieces of equipment, for total direct costs EA of \$1,009.00. The CO, after adding mark-ups of \$32.00, liability & compensation insurance; \$31.00, home office overhead; \$4.00, social security and unemployment insurance; \$68.00 prime contractor profit; and \$24.00 prime contract bond premium; recommended that JC should be paid an EA of \$1,217.00 and be granted a contract extension of one calendar day (*see* note 31 *infra*). The Government unilaterally itemized the equipment costs but it did not provide evidence sufficient for us to determine how these costs were derived leaving us with JC's equipment costs less any amount disallowed. (SR4, tab 4; E-R4, tab 97)

82. On 24 July 1986 the CO issued unilateral Modification No. P00052 wherein at item "e" it was stated that JC was being compensated for (E-findings 154-55; E-R4, tab 97):

Tie-in at Building 307 includes additional excavation, backfill, and compaction to bring lateral to grade. Provide and install 8 LF of 2" pipe and 2-45°elbows. (PCO #109)

ADD: \$1,217.00

83. The Government contends the claimed salaries of the salaried employees are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC's 10 percent field overhead mark-up (finding 15 *supra*). The Government neither contends nor argues that any of the other claimed costs were duplicative of any costs otherwise recovered or included in "overhead." JC's Breakdown of Estimate of Direct Costs claimed \$350 for "Power and Hand Tools, Etc." and \$160 for "Hand Tools, Power Tools, Etc." (finding 78 *supra*). JC has not reconciled this double

billing discrepancy and we are unable to determine how these amounts were derived. We find JC entitled to \$160.00 vice \$350.00.

DECISION

JC has failed to prove it incurred additional costs due to having paid its salaried employees, including its backhoe operator, wages over and above their salaries or that any alleged additional compensation paid to the salaried employees was not included in JC’s 10 percent field overhead mark-up (finding 13-15 and Discussion *supra*). We disallow recovery of these claimed costs as well as the following: recovery of the labor and fringe benefit costs of the operator, a salaried employee (finding 83); \$350 for power and hand tools which was double billed (finding 83 *supra*); and the cost for more than one pickup truck (finding 80 *supra*; see note 30 *infra*). We find JC’s labor and material costs reasonable since the Government does not contest JC’s claim the concrete to be removed was thicker and the lateral was at a depth greater than JC anticipated and the Government’s documents stated. We find that JC is entitled to itemized equipment costs (findings 11b, 81 *supra*). We also allow the recovery of the flatbed truck which was listed on the DRIs (finding 80 *supra*). The Board finds JC’s EA entitlement for the additional work to make the tie-in at building 307 is:

ITEM	COST	
LABOR (17.5 M/H @ \$13.85 per M/H, per JC’s estimate)	\$242.38	
FRINGE BENEFITS (17.5 M/H @ \$5.72 per M/H, per JC’s estimate)	100.10	
SUPERVISION (SALARIED EMPLOYE)	0	
OPERATOR (SALARIED EMPLOYEE)	0	
MATERIAL (incl. sales tax)	495.87	
BACKHOE (8.75 M/H @ \$21.70 per M/H, per JC’s estimate)	189.88	
1 PICKUP (17.5 M/H @ \$8.75 <sup>30</sup> per M/H, per Gov’t. estimate)	153.13	
OFFICE AND EQUIPMENT (8.75 M/H @ \$20 per M/H, per Gov’t. estimate)	175.00	
FLATBED DUMP TRUCK (3 M/H @ \$13.85 per M/H, per JC’s estimate)	41.55	
AIR COMPRESSOR /JACKHAMMER (17.5 M/H @ \$20 per M/H)	350.00	
EQUIPMENT (NOT ACCOUNTED FOR ALREADY)	254.00	
SUBTOTAL		\$2,001.91
FIELD OVERHEAD (10% of subtotal)	200.19	
LIABILITY & COMPENSATION INS. (13% of labor cost)	31.51	
SUBTOTAL		\$2,233.61
HOME OFFICE OVERHEAD (3% of subtotal)	67.01	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	31.51	
PRIME CONTRACTOR’S WORK		\$2,332.13
PRIME CONTRACTOR’S PROFIT 6%	139.93	
SUBTOTAL		\$2,472.06
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	49.44	
TOTAL COST		\$2,521.50

JC’s appeal is sustained in the amount of \$2,521.50

36. ADDITIONAL WORK AT TIE-IN, BUILDING 309  
 37. ADDITIONAL WORK AT TIE-IN, BUILDING 311

84. JC’s PCOs 106 and 107 claimed an EA of \$3,213.07 and 2 calendar days time extension each for “Change Order Request for Tie-in at Building 309, See Attached Letter; [and] Change Order Request for Tie-in at Building 311, See Attached Letter” (E-R4, tabs 129, 130; ex. A-14). The tie-ins at buildings 309 and 311 were part of the new water system being installed and JC performed changed work at these locations. JC’s BREAKDOWN ESTIMATE OF DIRECT COSTS AND ESTIMATE FOR CHANGE ORDER stated (ex. A-14):

BREAKDOWN ESTIMATE OF DIRECT COSTS <sup>31</sup>							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Tie-in at each buildings 309 and 311							
Labor	17.5	13.85	242.37				
Benefits	17.5	5.72	100.10				
Operator	8.75	17.29	151.28				
Benefits	8.75	7.24	63.35				
Supervision	6.5	20.00	130.00				
Air Compressor & Jackhammer	12.75					20.00	255.00
Power and Hand Tools, Etc.	12.75					20.00	255.00
Pickups 2 at 6.5 hr. ea.	13					9.80	127.40
Backhoe	8.75					30.00	262.50
Flatbed Dump Truck	3					13.85	41.55
Office & Equipment	8.75					20.00	175.00
Power Plant	8					2.50	20.00
Wacker	4					2.50	10.00
Hand tools, Power Tools, Etc.	8					20.00	160.00
Welder	8					8.00	64.00
Concrete	1			80.00	80.00		
Soder & Bends & Misc. Mat. & Equipment	1			25.00	25.00		
2” Copper Pipe	43			9.09	390.87		
<b>TOTAL</b>			687.10		495.87		1,370.45

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR’S WORK [APPLICABLE TO BLDG. 309 AND 311]		
ITEM	COST	
LABOR	\$523.65	
FRINGE BENEFITS	163.45	
MATERIAL (incl. sales tax)	\$495.87	

RENTAL EQUIPMENT (incl. sales tax)	1,370.45	
SUBTOTAL		\$2,553.42
FIELD OVERHEAD (10% of subtotal)	255.34	
LIABILITY & COMPENSATION INS. (13% of labor cost)	68.07	
SUBTOTAL		\$2,876.83
HOME OFFICE OVERHEAD (3% of subtotal)	86.30	
SOCIAL SECURITY & UNEMPLOYMENT INSURANCE. (13% of line labor cost)	68.07	
SUBTOTAL		\$3,031.20

SUMMARY		
PRIME CONTRACTOR'S WORK	\$3,031.20	
PRIME CONTRACTOR'S PROFIT 6%	181.87	
SUBTOTAL		3,213.07
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	
TOTAL COST		\$3,213.07

Contractor Requests Two, (2), Additional Calendar Days.

85. In his 20 May 1986 letter to the ROICC, Mr. Bybee stated (E-R4, tab 129):

Change Order Request for Tie-in at building 309[.]

This is extra work above and beyond the agreed on work during the January 10, 1986 walk through. This work was caused because the existing line was much deeper than the 4' anticipated by both the Government and the contractor during the January 10, 1986 walk through. This work was accomplished on the following dates:

4/22, 4/16, 4/10, 4/7, 4/2, 3/28, 3/25, 3/24, 3/22, 3/21, 1986

86. In another 20 May 1986 letter to the ROICC, Mr. Bybee stated (E-R4, tab 130):  
Change Order Request for Tie-in at building 311[.]

This is extra work above and beyond the agreed on work during the January 10, 1986 walk through. This work was caused because the existing line was much deeper than the 4' anticipated by both the Government and the contractor during the January 10, 1986 walk through. This work was accomplished on the following dates:

4/16, 4/10, 4/7, 4/2, 3/28, 3/25, 3/24, 3/22, 3/21, 1986

87. JC's certified payrolls for 21, 22, 24, 25, and 28, March, and 2, 7, 10, 16, and 22 April 1986, stated the only employees working were salaried, laborers, or an operator, Mr. Robert Clark, a salaried employee. We accept Mr. Bybee's 20 May 1986 letters,

uncontested by the Government, as an accurate depiction of why the extra work was needed at the tie-in at buildings 309 and 311 (findings 85-86 *supra*). Mr. Mulligan, noting JC's DRIs listed anywhere from one to three pickup trucks at the site remarked, and we so find, that JC had only one truck (E-R4, tabs 97, 128, 149). Mr. Mulligan does not dispute, and we find from a review of JC's DRI for 21, 24, 2528 March, and 2, 7, 10, April 1986, that a 2 -ton flatbed truck was at the job site (ex. A-14).

88. On 24 July 1986 the CO issued unilateral Modification No. P00052 wherein at items "c" and "d" it was reported that JC was being compensated for (E-R4, tab 97; E-finding 158-59):

- c. Tie-in at Building 311 includes additional excavation, backfill, and compaction to bring lateral to grade. Provide and install 8 LF of 2" pipe and 2-45° elbows. (PCO #106)  
Add. \$1,217.00
- d. Tie-in at Building 309 includes additional excavation, backfill, and compaction to bring lateral to grade. Provide and install 8 LF of 2" pipe and 2-45° elbows. (PCO #107)  
Add. \$1,217.00

89. The Government's ESTIMATE FOR DIRECT COSTS FOR CHANGE ORDERS for each PCO, 106 and 107, stated JC was entitled to payment of \$430.00 for 19 M/H of labor; \$100.00 for material; and \$479.00 for equipment for a total EA direct cost of \$1,009.00 for the added work to make the tie-in at each of the two buildings. The CO after adding \$32.00, liability and compensation insurance; \$31.00, home office overhead; \$4.00, social security and unemployment insurance; \$68.00, prime contractor profit; and \$24.00, prime contractor bond premium; recommended, and Modification No. P00052 recorded, JC was entitled to an EA of \$1,217.00 and a contract extension of one calendar day for each building tie-in. The Government unilaterally itemized the equipment costs but it did not provide evidence sufficient for us to determine how these costs were derived leaving us with JC's equipment costs less any amount disallowed. (E-R4, tabs 97, 129, 130, 149; SR4, tab 4)

90. The Government contends the claimed salaries for the salaried employees are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC's 10 percent field overhead mark-up (finding 15 *supra*) The Government neither contends nor argues that any of the other claimed costs were duplicative of any costs otherwise recovered or included in "overhead." JC's Breakdown of Estimate of Direct Costs claimed \$255 for "Power and Hand Tools, Etc." and \$160 for "Hand Tools, Power Tools, Etc." (finding 84 *supra*). JC has not reconciled this double billing discrepancy and we are unable to determine how these amounts were derived. We find JC entitled to \$160.00 vice \$255.00.

## DECISION

JC has failed to prove it incurred additional costs due to having paid its salaried employees, including its backhoe operator, wages over and above their salaries or that any alleged additional compensation paid to the salaried employees was not included in JC's 10 percent field overhead mark-up (finding 13-15 and Discussion *supra*). We disallow recovery of these claimed costs as well as the following: recovery of the labor and fringe benefit costs of the operator since he was a salaried employee (findings 13-15 and Discussion, 87 *supra*); \$255 for power and hand tools which was double billed (finding 90 *supra*); and the cost for more than one pickup truck (finding 87 *supra*). We find JC's labor and material costs reasonable since the Government does not contest JC's claim the concrete to be removed was thicker and the lateral was at a depth greater than JC anticipated and the Government's documents stated. We find that JC is entitled to itemized equipment costs (findings 11b, 89 *supra*). We also allow the recovery of the flatbed truck which was listed on the DRIs (finding 87 *supra*). The Board finds JC's EA entitlement for the additional work to make the tie-in at buildings 309 and 311 is:

ITEM	COST	
LABOR (17.5 M/H @ \$13.85 per M/H)	\$242.38	
FRINGE BENEFITS (17.5 M/H @ \$5.72 per M/H)	100.10	
SUPERVISION (SALARIED EMPLOYEE)	0	
OPERATOR (salaried employee)	0	
MATERIAL (incl. sales tax)	495.87	
BACKHOE (8.75 M/H @ \$21.70 per M/H)	189.88	
1 PICKUP (6.5 M/H @ \$8.75 per M/H) <sup>32</sup>	56.86	
OFFICE AND EQUIPMENT (8.75 M/H @ \$20 per M/H)	175.00	
FLATBED DUMP TRUCK (3 M/H @ \$13.85 per M/H)	41.55	
AIR COMPRESSOR/JACKHAMMER	255.00	
MATERIAL EQUIPMENT (NOT ACCOUNTED FOR ALREADY)	254.00	
SUBTOTAL		\$1,810.64
FIELD OVERHEAD (10% of subtotal)	181.06	
LIABILITY & COMPENSATION INS. (13% of labor cost)	31.51	
SUBTOTAL		\$2023.21
HOME OFFICE OVERHEAD (3% of subtotal)	60.70	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	31.51	
PRIME CONTRACTOR'S WORK		\$2115.42
PRIME CONTRACTOR'S PROFIT 6%	126.93	
SUBTOTAL		\$2,242.35
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	44.85	
TOTAL COST		\$2,287.20

JC's appeal is sustained in the amount of \$2,287.20 for tie-in at building 309 and \$2,287.20 for tie-in at building 311 for a total EA of \$4,574.40.

39. ADDITIONAL WORK AT STATION 33+32 (HOBBY SHOP)

91. JC's PCO 105 claimed an EA of \$5,707.83 and 4 calendar days time extension for "Change Order Request for Tie-in at Station 33+32 (Hobby Shop), because it was in opposite direction as shown on plans. 5/3, 4/28, 4/24, 4/13, 4/12, 4/11, 4/9, 1986. Also 4/8 & 4/7/86" (ex. A-16; E-R4, tab 132). The tie-in at Station 33+32 was part of the new water system being installed and JC performed changed work at this location. However, JC did not distinguish original contract work from changed work on the days cited in PCO 115. JC's BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (*id.*):

BREAKDOWN ESTIMATE OF DIRECT COSTS									
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT		CREDIT TO GOVERNMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNITS	
Station 33+32 (Hobby Shop)									
Labor	30	13.85	415.50					10	138.50
Benefits	30	5.72	171.60					10	57.20
Operator	15	17.29	259.35					5	86.45
Supervision	20	20.00	400.00					1	20.00
Air Compressor & Jackhammer	15					20.00	300.00	1	20.00
Backhoe	15					30.00	450.00	5	150.00
Pickup	20					9.80	196.00	1	9.80
Pickup	15					9.80	147.00	5	49.00
Dump Truck	3					13.75	41.25	1	13.75
Welder	15					8.00	120.00	5	40.00
Office & Equipment	20					20.00	400.00	1	20.00
Additional Saw Cutting	1			225.00	225.00			0	0
2" Pipe	59			3.71	218.89			0	0
¾" Pipe	0			1.17	0			30	35.10
3" Meter	1			655.93	655.93			0	0
¾" Meter	0			189.00	0			1	189.00
Soder, 45°, 90°, Misc. Material & equipment	1			50.00	50.00			0	0
Operator Benefits	15	7.24	108.60					5	36.20
2" Saddle	1			65.00	65.00			0	0
2" Gate Valve	1			78.18	78.18			0	0
Wet Tap	1			200.00	200.00			0	0
TOTAL			1,355.05		1,493.00		1,654.25		865.00

ESTIMATE FOR CHANGE ORDER		
PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	\$1,074.85	

FRINGE BENEFITS	280.20	
MATERIAL (incl. sales tax)	1,493.00	
RENTAL EQUIPMENT (incl. sales tax)	1,654.25	
SUBTOTAL		\$4,502.30
FIELD OVERHEAD (10% of subtotal)	450.23	
LIABILITY & COMPENSATION INS. (13% of labor cost)	139.73	
SUBTOTAL		\$5,092.26
HOME OFFICE OVERHEAD (3% of subtotal)	152.76	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	139.73	
TOTAL		\$5,384.75

SUMMARY		
PRIME CONTRACTOR'S WORK	\$5,384.75	
PRIME CONTRACTOR'S PROFIT 6%	323.08	
SUBTOTAL		\$5,707.83
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	
TOTAL COST		\$5,707.83
TOTAL CREDIT		\$865.00

Contractor Requests Four, (4), Additional Calendar Days

92. Mr. Bybee in his 20 May 1986 letter to the Government, referencing the change order request for tie-in at station 33+32, (Hobby Shop), stated, and we so find (ex. A-16):

The additional work on Station 33+32, (Hobby Shop), 3/4" tie-in was caused by the fact that the existing line is a 2" line and not a 3/4" line and that the tie-in had to be made in an old existing meter box that existed the opposite direction from where the plans showed the tie-in to be made.

93. JC's certified payrolls for 7, 8, 9, 11, 12, 13, 24, 28 April and 3 May 1986 stated the only employees working were salaried, laborers, or an operator, Mr. Clark, a salaried employee (ex. A-16). At the quantum hearing JC, in support of its claim, submitted DRIs for 7, 8, 9, 11, 12, 13, 24, 28 April and 3 May 1986 (*id.*) Although each of the DRIs indicated work was being performed at station 33+32 and/or Hobby House/Shop, JC has not distinguished, and we are unable to distinguish, change work from original contract work (finding 91 *supra*). Mr. Mulligan noting JC's DRIs listed anywhere from one to three pickup trucks remarked, and we so find, that JC had only one truck (E-R4, tabs 97, 128, 149).

94. On 24 July 1986 the CO issued unilateral Modification No. P00052 wherein at item "b" it was recorded that JC was being compensated for (E-findings 154-55; E-R4, tab 97):

Tie-in at station 33+32 (Hobby Shop) requires increasing the 3/4" line to a 2" line, provide and install 4-90° elbows and

appurtenances, [sic] additional excavation, backfill, and  
compaction. (PCO #105) ADD: \$3,264.00

95. The Government's ESTIMATE FOR DIRECT COSTS FOR CHANGE ORDERS for PCO 105 stated JC was entitled to payment of \$977.00 for 41 M/H of labor; \$849.00 for material; and \$615.00, itemized for equipment, for a total EA direct cost of \$2,441.00. The CO after adding \$240, itemized field overhead; \$127.00, liability and compensation insurance; \$84.00, home office overhead; \$127.00, social security and unemployment insurance; \$181.00, prime contractor profit; and \$64.00, prime contract bond premium; recommended, and Modification No. P00052 recorded, JC was entitled to an EA of \$3,264.00 and a contract extension of two calendar day. (E-R4, tabs 97, 248)

96. The Government contends the claimed salaries for the salaried employees are not recoverable as direct job costs since these costs were an indirect overhead expense recovered under JC's 10 percent field overhead mark-up (finding 15 *supra*) The Government neither contends nor argues that any of the other claimed costs were duplicative of any costs otherwise recovered or included in "overhead."

#### DECISION

It is uncontested that station 33+32 would be tied into the new water system being installed under the contract and that JC performed change work at this location (finding 91 *supra*). JC, having the burden of proving entitlement to an EA for performing changed work at station 33+32, submitted DRIs for the nine days cited in PCO 105 as support for its claim and to meet its burden of proof (finding 93 *supra*). However, the DRIs failed to denote or distinguish changed work from original contract work, and PCO 105 only made a general statement that changed work was performed at station 33+32. JC, failing to introduce evidence sufficient for us to determine what work performed during the nine days cited in PCO 105 was changed work, has failed to prove a causal connection existed between the alleged increased costs and the claimed event, *i.e.*, the performance of changed work at station 33+32 on the days cited was changed work and not original contract work. *Triax-Pacific v. Stone, supra; DWS, Inc. supra; R.W. Contracting, Inc., supra.*

Since JC failed to prove when changed work was performed we turn to the Government's estimate where we find the Government computed the direct M/H cost for labor, at a rate of \$23.82 per M/H for 41 M/Hs, to be \$977.00 (finding 95 *supra*). Since the Government neither provided evidence on how its M/H labor rate was derived nor reconciled the difference between its M/H labor rate and the M/H labor rate listed on the PCO and certified payrolls of \$19.57 (labor and benefits) for laborers, we accept JC's PCO 105 rate as accurate. We accept the Government's calculation that 41 M/Hs were expended to complete changed work at station 33+32.

That JC performed changed work at station 33+32 is uncontested (finding 91 *supra*). Since JC failed to prove all the work performed at station 33+32, on the nine days cited in PCO 105, was change order work (finding 93 *supra*) we disallow the backhoe costs because of a lack of proof it was used solely for changed work. JC has also failed to prove it incurred additional costs due to having paid salaried employees, including the backhoe operator, wages over and above their salaries or that the alleged additional compensation paid to the salaried employees was not included in JC's 10 percent field overhead allocation (findings 13-15 and Discussion, 96 *supra*). Recovery of these costs is disallowed. We also disallow the recovery of the labor and fringe benefits costs for the operator since this work was performed by a salaried employee.

We find reasonable JC's claimed material costs since they are in line with prices agreed to for the same or similar items during negotiations for bilaterally executed modifications (finding 11a *supra*). Based on the CO's itemization of equipment costs we allow JC to recover its cost for 20 M/Hs for two pickup trucks and 12 M/Hs for office and equipment. We allow recovery of the cost for a flatbed truck which is listed on the 8 April DRI. We further allow JC to recover those items of equipment and material listed on the Government's estimate and will not apply the 10 percent of labor costs for equipment costs (finding 11b *supra*). The Board accepts JC's uncontroverted credit remuneration to the Government and will compute JC's EA less the applicable Government credit. The Board finds JC's EA entitlement for the additional work performed to make the tie-in at station 33+32, hobby shop, is:

ITEM	COST	
LABOR (30 M/H @ \$13.85 per M/H)	\$415.50	
FRINGE BENEFITS (30 M/H @ \$5.72 per M/H)	171.60	
SUPERVISION (SALARIED EMPLOYEE)	0	
OPERATOR (salaried employee)	0	
MATERIAL (incl. sales tax) (\$1,493 less \$256.30 credit)	1,232.70	
BACKHOE	0	
2 PICKUP (20 M/H @ \$9.80 per M/H)	196.00	
OFFICE AND EQUIPMENT (12 M/H @ \$20 per M/H)	240.00	
AIR COMPRESSOR/JACKHAMMER (\$300 less \$100 credit)	200.00	
FLATBED DUMP TRUCK (\$41.25 less \$13.75 credit)	27.50	
EQUIPMENT	0	
SUBTOTAL		\$2,483.30
FIELD OVERHEAD (10% of subtotal)	248.33	
LIABILITY & COMPENSATION INS. (13% of labor cost)	54.02	
SUBTOTAL		\$2,785.65
HOME OFFICE OVERHEAD (3% of subtotal)	83.57	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	54.02	
PRIME CONTRACTOR'S WORK		\$2,923.24
PRIME CONTRACTOR'S PROFIT 6%	175.39	
SUBTOTAL		\$3,098.63
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	61.97	
TOTAL COST		\$3,160.60

JC's appeal is sustained in the amount of \$3,160.60.

#### 42. MAINTAINING BARRICADE

97. In his 16 January 1986 letter to the ROICC referencing barricades Mr. Bybee stated (ex. A-17):

Request for compensation for barricades from June 1, 1985 through January 15, 1986.

1. 200 barricades, (various types and sizes) @ \$ .35 per day each.
  - a. \$.35 per day X 229 days X 200 barricades = \$16,030.00 This includes all maintenance, transportation, repairs and replacement

98. JC's 31 January 1986 PCO claimed an EA in the amount of \$20,364.96 and 229 days time extension for "Change Order on furnish and maintain barricades beyond the realm of the contract" (ex. A-17; E-R4, tab 135). JC's BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (*id*):

BREAKDOWN ESTIMATE OF DIRECT COSTS							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Labor 1 hr. per day	229	13.85	3,171.65				
Benefits	229	5.72	1,309.88				
Pickup 1 hr. per day	229					9.80	2,244.20
Material	229			10.00	2,290.00		
Replacement cost	229			30.00	6,870.00		
Total			4,481.53		9,160.00		2,244.20

PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	\$	3,171.65
FRINGE BENEFITS		1,309.88
MATERIAL (incl. sales tax)		\$9,160.00
RENTAL EQUIPMENT (incl. sales tax)		2,244.20
SUBTOTAL		\$15,885.73
FIELD OVERHEAD (10% of subtotal)		\$1,588.57
LIABILITY & COMPENSATION INS. (13% of labor cost)		412.31
SUBTOTAL		\$17,886.61

HOME OFFICE OVERHEAD (3% of subtotal)	536.60	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	412.31	
TOTAL		\$18,835.52

SUMMARY		
PRIME CONTRACTOR'S WORK	\$18,835.52	
PRIME CONTRACTOR'S PROFIT 6%	1,130.13	
SUBTOTAL		\$19,965.65
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	399.31	
TOTAL COST		\$20,364.96

Contractor requests 229 additional calendar days.

99. JC's 5 April 1986 PCO claimed an EA in the amount of \$34,438.59 and 50 days time extension for "Reissue change order dated January 31, 1986 for furnishing and maintaining barricades beyond the realm of the contract from April 30, 1986 through April 30 1986 [sic, 1987]" (ex. A-17; E-R4, tab 135). JC's BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (*id*):

BREAKDOWN ESTIMATE OF DIRECT COSTS							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Labor 1 hr. per day	395	13.85	5,470.75				
Benefits	395	5.72	2,259.40				
Pickup 1 hr. per day	395					9.80	3,871.00
Material	395			10.00	3,950.00		
Replacement cost	395			30.00	11,850.00		
Total			7,730.15		15,800.00		3,871.00

PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	\$ 5,470.75	
FRINGE BENEFITS	2,259.40	
MATERIAL (incl. sales tax)	\$15,800.00	
RENTAL EQUIPMENT (incl. sales tax)	3,871.00	
SUBTOTAL		\$27,401.15
FIELD OVERHEAD (10% of subtotal)	2,740.12	
LIABILITY & COMPENSATION INS. (13% of labor cost)	711.20	
SUBTOTAL		\$30,852.47
HOME OFFICE OVERHEAD (3% of subtotal)	925.57	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	711.20	
TOTAL		\$32,489.24

SUMMARY		
PRIME CONTRACTOR'S WORK	\$32,489.24	
PRIME CONTRACTOR'S PROFIT 6%	1,949.32	
SUBTOTAL		\$34,438.59
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	

TOTAL COST		\$34,438.59
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Contractor requests fifty, (50), additional calendar days.

100. JC's 25 April 1986 PCO claimed an EA in the amount of \$28,684.28 and 329 days time extension for "Change Order on furnishing and maintaining barricades beyond the realm of the Contract. 1/16, 1986 through 4/25/86" (ex. A-17; E-R4, tab 135). JC's BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (*id*):

BREAKDOWN ESTIMATE OF DIRECT COSTS							
ITEM OF WORK	NO. OF UNITS	LABOR		MATERIAL		EQUIPMENT	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Labor 1 hr. per day	329	13.85	4,556.65				
Benefits	329	5.72	1,881.88				
Pickup 1 hr. per day	329					9.80	3,224.20
Material	329			10.00	3,290.00		
Replacement cost	329			30.00	9,870.00		
Total			6,438.53		13,160.00		3,224.20

PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	\$ 4,556.65	
FRINGE BENEFITS	1,881.88	
MATERIAL (incl. sales tax)	\$13,160.00	
RENTAL EQUIPMENT (incl. sales tax)	3,224.20	
SUBTOTAL		\$22,822.73
FIELD OVERHEAD (10% of subtotal)	2,282.27	
LIABILITY & COMPENSATION INS. (13% of labor cost)	592.36	
SUBTOTAL		\$25,697.36
HOME OFFICE OVERHEAD (3% of subtotal)	770.92	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	592.36	
TOTAL		\$27,060.64

SUMMARY		
PRIME CONTRACTOR'S WORK	\$27,060.64	
PRIME CONTRACTOR'S PROFIT 6%	1,623.64	
SUBTOTAL		\$28,684.28
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	
TOTAL COST		\$28,684.28

Contractor requests 329 additional calendar days.

101. JC's 22 May 1986 PCO claimed an EA in the amount of \$1,918.09 and 3 days time extension for "Change Order for furnishing and maintaining barricades beyond the realm of the contract April 30, 1986 through May 22, 1986" (ex. A-17). JC's BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER stated (*id*):

BREAKDOWN ESTIMATE OF DIRECT COSTS			
	LABOR	MATERIAL	EQUIPMENT

ITEM OF WORK	NO. OF UNITS	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
Labor 1 hr. per day	22	13.85	304.70				
Benefits	22	5.72	125.84				
Pickup 1 hr. per day	22					9.80	215.60
Material	22			10.00	220.00		
Replacement cost	22			30.00	660.00		
Total			430.54		880.00		215.60

PRIME CONTRACTOR'S WORK		
ITEM	COST	
LABOR	\$304.70	
FRINGE BENEFITS	125.84	
MATERIAL (incl. sales tax)	\$880.00	
RENTAL EQUIPMENT (incl. sales tax)	215.60	
SUBTOTAL		\$1,526.14
FIELD OVERHEAD (10% of subtotal)	152.61	
LIABILITY & COMPENSATION INS. (13% of labor cost)	39.61	
SUBTOTAL		\$1,718.36
HOME OFFICE OVERHEAD (3% of subtotal)	51.55	
SOCIAL SECURITY & UNEMPLOYMENT INS. (13% of labor cost)	39.61	
TOTAL		\$1,809.52

SUMMARY		
PRIME CONTRACTOR'S WORK	\$1,809.52	
PRIME CONTRACTOR'S PROFIT 6%	108.57	
SUBTOTAL		\$1,918.09
PRIME CONTRACT BOND PREMIUM (2% of subtotal)	0	
TOTAL COST		\$1,908.19

Contractor Requests Three, (3), Additional Calendar Days.

102. The Government by letter of 8 May 1986 informed JC to stop all work effective 14 May 1986, to turn over to the Government all material for which the Government had already paid, and to submit a deductive change order proposal within ten days for all work not completed as of 14 May (E-R4, tab 135). The Government acknowledges 9 May 1986 to be the revised contract completion date and 14 May 1986 as the beneficial occupancy date (E-finding 27). Subsequent to 14 May 1986, when JC was ordered off the base, JC performed no additional contract work.

103. The CO in his 14 February 1991 final decision determined JC was entitled to additional EA of \$9,754 for providing barricades (E-finding 188). The Government does not dispute JC's entitlement to that amount (Govt. br. at 8-9).

104. The Board determined that all modifications up to and including Modification No. P00044, the last executed bilateral modification, signed by the Government on 14 April 1986, included a general release; incorporated time extensions where applicable, and were executed by appellant without reservation for additional EA (E-finding 192).

105. The Board in its 28 August 1997 decision, determined that JC did provide and maintain extra barricades but was not entitled to additional compensation where the barricades were provided pursuant to changes under executed bilateral modifications since additional remuneration for such barricades would be barred by the modification's release. The Board further noted that JC's former employee, Mr. Brant, testified the trenches stayed open for long periods of time due to JC's failure to provide material necessary to make tie-ins, and that "barricades were serviced once or twice a week but if found broken were not repaired." *J.C. Equipment Corporation, supra*, at 145,286-87.

### DECISION

JC, on 8 May 1986 was informed that all work on the contract would cease effective 14 May 1986; the CO acknowledged 9 May 1986 as the contract completion date and 14 May 1986 as the beneficial occupancy date; JC was removed from the base on 14 May 1986; and JC performed no additional contract work after 14 May 1986. Except for the 22 May 1986 PCO, which requested remuneration for barricades furnished April 30 through 22 May 1986, the remaining barricade PCOs were requesting remuneration for barricades which were provided pursuant to bilateral change orders and, accordingly, are barred by the general release of the change order. Under the theory of accord and satisfaction, JC, having executed Modification No. P00044 without reservation, would not be entitled to additional EA after the 14 April 1986 date when the Government signed Modification No. P00044 (finding 105).

However, this does not end our review since there were outstanding PCOs yet to be negotiated on 9 May 1986 when the Government acknowledged the contract was completed. Assuming, *arguendo*, the submittals do not contain costs for additional barricades, which is what JC contends, the claim for additional barricade compensation over and above what has already been paid fails for lack of proof. There is no question that JC did have additional barricades at the site during contract performance (E-findings 185-86). JC, except to state that it had in excess of 200 barricades at the project site necessitated by changed conditions, and for which it has yet to be paid, has failed to introduce proof that such was the case. As we previously held, JC has the burden of proving its case by a preponderance of the evidence. *R.W. Contracting, Inc., supra*. JC, to meet its burden of proof, at the very least, needed to identify the number of additional barricades and the time span outside of that which we have already held was noncompensable, where the extra barricades were provided. Except for the 22 May 1986 PCO no such evidence was submitted. In the same vein, JC has not proven that its need for extra barricades did not result from its own delay in getting material to make the tie-ins as testified to by Mr. Brent (finding 104, *supra*). JC has failed to provide evidence it is entitled to compensation greater than the amount the CO awarded in his final decision.

JC's appeal is sustained in the undisputed amount of \$9,754.00.

43. GOVERNMENT DELAY AND DEDUCT MODIFICATION NO. P00051

106. On 14 May 1986 JC's contract was stopped and the Government took beneficial occupancy of the fresh water system (finding 102 *supra*). The ROICC on 7 July 1986 prepared PCO 104 which included a justification and approval (J&A) for the deductions taken; an itemized list of alleged uncompleted work; the GOVERNMENT ESTIMATE OF DIRECT COSTS FOR CHANGE ORDERS listing the cost associated with each item of alleged uncompleted work; and a BREAKDOWN ESTIMATE OF DIRECT COST and ESTIMATE FOR CHANGE ORDER indicating a deduction of \$50,990 was being taken from JC's contract (E-R4, tab 247).

107. On 24 July 1986 the Government issued unilateral contract Modification No. P00051 deleting the alleged uncompleted contract work and decreasing the contract price \$50,990.00 with no change in the contract completion time (E-R4, tabs 247, 273).

108. The Board's 28 August 1998 decision held that JC's appeal for delay damages was granted for damages associated with the period from 22 April through 9 May 1986, a period of 17 days. The Board further remanded for negotiation the deductions unilaterally taken by the Government and recorded in Modification No. P00051. *J.C. Equipment Corporation, supra* at 145,287-88. Mr. Butler "guesstimated" that on 14 May 1986 the value of the work remaining was \$5,000.00. JC did not submit a detailed proposal for the deductive work as requested by the AROICC; and JC never made a "monetary assessment of those items of work to be completed" (tr. 3/169-73, 182-83). There being no probative contrary evidence or basis for computation, we find JC did not complete work valued at \$50,990.00 as computed by the Government (findings 106, 107 *supra*).

109. Ms. Butler's summary stated that JC's cost per day was \$1,195 (ex. A-18). Ms. Butler testified that she computed the \$1,195.00 figure from PCO 70 by dividing the total cost of the PCO, "\$37,000," by the number of days of delay requested from 14 November 1985 to 24 January 1986, 71 days.<sup>33</sup> The Board finds that PCO 70 sought \$37,038 for the period from 14 November 1985 to 24 January 1986, a total of 71 days of delay (SR4, tab 44). The Board, using Ms. Butler's method for computing the daily per day cost, was unable to duplicate her result. Instead the Board computed, and it so finds, that the daily rate was \$521.66 ( $\$37,038 \div 71$  calendar days). The Government did not provide a cost per day computation of its own.

DECISION

Addressing deduct Modification No. P00051 the Government has the burden of proving the amount of deduction it is entitled to. *Santa Fe Engineering, Inc.*, ASBCA No. 31686, 89-3 BCA ¶ 22,207 a 111,706. The Government has provided the basis upon which

the deduction was taken (finding 106 *supra*). The Board in its entitlement decision remanded this matter back to the parties for negotiation and settlement (finding 108 *supra*). Mr. Butler at the quantum hearing testified JC did not submit a detailed proposal for the deductive work and never made a monetary assessment of the items of work that were to be completed (*id.*). JC having failed to provide evidence countering the Government's PCO 104 assessment of costs for the deduction leads us to find that the Government has met its burden of proof that the items listed in PCO 104 were never completed and the amount deducted for these items was the cost of such work.

Addressing JC's delay claim, this Board has held that in the absence of an accord and satisfaction appellant is required to independently establish the length of time to which it is entitled to compensation for delay costs. *Giuliani Construction Co., Inc.*, ASBCA No. 37174, 89-3 BCA ¶ 22,098. In our 28 August 1997 decision we determined that JC was entitled to delay associated with the period from 22 April through 9 May 1986, a period of 17 days (finding 108 *supra*). Because the Government has not provided evidence on its position relative to JC's daily cost we accept Ms. Butler's formula for computing same (finding 109 *supra*). However, the Board, unable to duplicate the results obtained by Ms. Butler and having no explanation reconciling the differences between her results and our own, adopts our calculations as correct (*id.*). The Board finds JC's daily delay cost was \$521.66 and, accordingly, JC is entitled to an EA of \$8,868.22 (\$521.66 x 17 days of delay) (*id.*).

JC's appeal is sustained in the amount of \$8,868.22

#### 44. INVOICES

110. On 14 May 1986 the Government took beneficial occupancy of the fresh water system (finding 102 *supra*).

111. On 24 July 1986 the Government, in response to JC's PCOs 99, 100, 101 and 102, issued unilateral contract Modification No. P00048 extending JC's contract four calendar days, from 22 to 26 April 1986, and increasing the contract price \$4,595.00 (E-R4, tab 273).

112. On 24 July 1986 the Government, in response to JC's PCO 103, issued unilateral contract Modification No. P00049 extending JC's contract one calendar day, from 26 to 27 April 1986, and increasing the contract price \$1,652.00 (*id.*).

113. On 24 July 1986 the Government, in response to JC's PCO 93, issued unilateral contract Modification No. P00050 extending JC's contract two calendar days, from 27 to 29 April 1986, and increasing the contract price \$3,277.00 (*id.*).

114. On 24 July 1986 the Government, in response to JC's PCOs 105 through 107, 109, and 112 through 118, issued unilateral contract Modification No. P00052 extending JC's contract 10 calendar days, from 29 April 1986 to and including 9 May 1986, and increased the contract price \$9,496.00 (E-R4, tabs 248, 249).

115. On 24 July 1986 the Government, in furtherance of its taking beneficial occupancy on 14 May 1986 issued unilateral contract Modification No. P00051 deleting contract work which it alleged was never completed by JC and decreasing the contract price \$50,990.00 with no change in the contract completion time (finding 108 *supra*; E-R4, tab 247).

116. On 21 July 1988, JC filed a certified "FORMAL CLAIM AND DEMAND FOR PAYMENT" of an EA of \$2,050,000.96 (E-finding 32).

117. On 16 October 1990 the Department of Labor (DOL) issued a determination wherein it was stated that the parties, DOL and JC, had entered into a settlement agreement wherein JC agreed to release \$13,315.00 being held by the Government for payment of back wages to employees who were employed on contract A805 (E-finding 33).

118. On 14 February 1991 the CO issued his final decision wherein he stated that after deleting and combining issues, in accordance with the parties' 9-10 April 1990 agreement, JC's claim was reduced to \$1,251,040;<sup>34</sup> JC failed to provide evidence supporting its claim for a contract time extension or that JC was entitled to an additional \$17,820.00 plus interest for changed work performed during contract performance (E-R4, tab 149; E-finding 34).

119. On 16 April 1991 the CO issued unilateral Modification No. P00057 wherein pursuant to the final decision, the contract price was increased \$22,603.34 (\$17,820.00 awarded by the CO in the final decision plus interest of \$4,783.34), thereby raising the total contract price from \$1,048,452.00 to \$1,071,055.34 with no change in contract completion time (E-R4, tab 270)

120. On 19 April 1991 JC, in accordance with the CO's final decision, submitted invoice number "28 Partial," whereon Mr. Bybee, and the ROICC, made the following entries (tr. 3/32-34; E-R4, tab 690)<sup>35</sup> :

The enclosure provides breakdown of this statement of performance.

A. Total value of contract through change <i>P00057</i>	\$1,071,055.34
B. Percentage of performance complete	100%
C. Value of completed performance	\$1,071,055.34
D. Less: Total of prior invoices	<u>\$1,035,237.00</u>

E. Amount of this invoice \$ 35,818.34  
 Signature and Title Carl Bybee Project Manager

**FIRST ENDORSEMENT**

FROM: ROICC Coronado  
 TO: RFSD, NSC Oakland

1. Payment is recommended as follows:
 

A. Amount of work completed to 16 April 1991	\$1,071,055.34
B. Less:	
Retention <i>Department of Labor Retention</i>	<u>\$ 13,215.00 [sic]</u>
Other Deductions	
C. Subtotal	\$1,057,840.34
D. Less previous payments	<u>\$1,035,237.00</u>
E. Recommended amount for #28 Partial payment	<u>\$ 22,603.34</u>
  
2. Elapsed contract time *100%*
  
3. *Point of contact at ROICC Coronado is Deniese Steverson, 619-545-3037. A copy of contract modification P00057 and a copy of the Contracting Officer's Final Decision are attached for the use of the paying office.*

Signature and Title Richard D. Roth, LT, CEC, USN, ROICC

121. Ms. Butler testified the retention of \$13,215 to be paid to DOL, as stated by the ROICC on the endorsement section of invoice No. 28 Partial, was in compliance with JC's agreement with the DOL (tr. 2/246). However, Ms. Butler contended that invoice 28 partial was executed "to accommodate the Navy to be able to process and to proceed with the contracting officer's decision . . . [a]nd at all times, it was known that none of that unilateral modifications or amounts stated therein were accepted by us" (tr. 2/253-54). Ms. Butler contends that JC was never paid the amounts stated in any of the unilateral modifications issued by the Navy. JC's invoice claim, in the amount of \$71,203.85, stated (ex. A-19):

AMOUNT DUE PER INVOICE #27:

P00044	\$14,165.00
RETENTIONS	\$19,055.94
MODIFICATIONS	<u>\$37,982.91</u>

(as shown below)

TOTAL		<u>\$71,203.85</u>	
CLAIM or TAB	P000	PCO	AMOUNT
19	48	99	\$2093.91
20	48	100	7254.18
21	48	101	1900.18
22	48	102	11948.56
23	49	103	3136.60
24	49	103	762.22
25	50	93	7682.31
26	52	90	<u>3204.95</u>
Total			\$37982.91

122. On 18 April 1991 the Deputy ROICC, Mr. George M. Polansky, forwarded to the Regional Finance Service Department approving, in accordance with invoice “#28 Partial,” \$22,603.34 for payment (SR4, tab 4; tr. 3/31-32).

123. On 26 April 1991 check number 91049341 was issued to JC Equipment Corp. in the amount of \$22,377.31 (\$22,603.34 less \$226.03, the one percent discount for prompt payment) (SR4, tab 5). Ms. Butler testified that JC was paid the amount cited on invoice No. 28 plus interest (tr. 2/248-49).

#### DECISION

Mr. Bybee on 19 April 1991 submitted a “28 Partial” invoice wherein he acknowledged the contract was 100 percent completed. When prior invoices, totaling \$1,035,237.00, are deducted from the “total value of the contract through change P00057” of \$1,071,055.34, the total amount of invoice No. 28 partial was \$35,818.34 (finding 120). Ms. Butler’s testimony that JC was not paid for both unilateral and bilateral modifications is in contradiction to Mr. Bybee’s submitted invoice No. “28 partial” wherein he stated JC had received payment for invoices, through change No. P00057 and that the only amount due under the contract was \$35,818.34 (*id.*). Suffice it to say that Mr. Bybee’s contemporaneous acknowledgment regarding the status of the contract and contract payments as of invoice No. 28 partial is more compelling and believable than Ms. Butler’s contradictory testimony (*id.*). As for “28 partial” there is no disagreement that it was paid (finding 123). We accept invoice “28 partial” as the true status of payments made to JC under the contract as of 19 April 1991 and, accordingly, we must conclude that JC had been paid all moneys, as cited in the modifications issued up to and including Modification No. P00057.

JC's invoice appeal is denied.

SUMMARY

Based on the above we have determined that JC is entitled to the following EA:

Claim No.	PCOs	CO Awarded and Paid	Board Award	JC's EA
4, 7, 25-29	PCO 110 - 117	\$8,825.00	\$8,349.40	-\$ 475.60
5	PCO 81	0	\$722.98	\$ 722.98
9	PCO 10XXXX	\$2,520.00	\$948.89	-\$1,571.11
30	Submittal 63	\$875.00	\$604.81	-\$ 270.19
31	Submittal 65	\$1,186.00	\$1,186.00	0
33	Submittal 71	\$739.00	\$686.61	-\$ 52.39
35	PCO 109	\$1,217.00	\$2,521.50	\$1,304.50
36, 37	PCOs 106, 107	\$2,434.00	\$4,574.40	\$2,140.40
39	PCO 105	\$3,264.00	\$3,160.60	-\$ 103.40
42	Barricades	\$9,754.00	\$9,754.00	0
43	Delay/Mod P00051		\$8,868.22	\$8,868.22
44	Invoices			0
TOTAL				\$10,563.41

JC's quantum appeal is granted in the amount of \$10,563.41 plus interest from 21 July 1988. JC's request for a contract time extension is denied.

Dated: 4 March 2002

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ALLAN F. ELMORE  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

CARROLL C. DICUS, JR.  
Administrative Judge  
Acting Vice Chairman  
Armed Services Board  
of Contract Appeals

### NOTES

<sup>1</sup> The record includes the appeal (R4) and supplemental appeal (SR4) files; appellant's supplemental (AR4) files; stipulation (stip.); Government (G-) and appellant (A-) exhibits; Government's brief (Govt. br.); appellant's brief (app. br.); transcript (tr.); deposition (depos.) of Carl Bybee; Board correspondence file (Bd. corr. file); and the record from the entitlement hearing. References to findings of fact made in, or documentation received during, the entitlement phase will be preceded by (E-).

<sup>2</sup> Mr. Bybee, who prepared and negotiated settlements on behalf of JC during contract performance, died prior to the entitlement hearing. Prior to his death Mr. Bybee had been deposed and his deposition was received into evidence during the entitlement hearing (E-ex. A-3; E-tr. 4/148). We rely on his deposition where indicated. Ms. Butler's summary, introduced during the quantum hearing, in some instances, claimed an EA different from Mr. Bybee's PCOs. The Board will not attempt to reconcile the differences but will rely on Mr. Bybee's PCOs, PCO negotiation memoranda, and bilaterally executed modifications, since these documents were contemporaneously made and were before the CO for consideration when writing the final decision, to ascertain the EA claimed, the cost for material, and to identify other patterns consistently followed during negotiations of bilaterally executed modifications.

<sup>3</sup> There are a number of issues raised by the parties which are common to most, if not all, of the claims to be addressed. Accordingly, these issues are addressed separately and will be referred to when necessary.

<sup>4</sup> Mr. Butler testified he "thought"/"believed" his weekly pay was \$1,000, Mr. Bybee's was \$800, Mr. Robert Clark was \$500, Mr. Huite was \$800, Mr. Monty Cobb was \$900, Mr. Jack Smith was \$800, Ms. Butler's was \$400 (tr. 1/67-72).

<sup>5</sup> During contract A805's performance LCDR Snook was an Ensign (E-finding 21).

<sup>6</sup> For ease of reference the number of the claim corresponds to the original number assigned at the entitlement hearing.

7 The time extensions requested in each of the PCOs will be addressed in JC's delay claim, number 43, *infra*.

8 The CO unilaterally computed as the direct costs for PCOs 110 through 118 the following amounts (E-R4, tab 97):

BREAKDOWN ESTIMATE OF DIRECT COSTS								
ITEM OF WORK	TOTAL M/H	LABOR		MATERIAL		EQUIPMENT		TOTAL PER PCO
		UNIT COST	TOTAL COST*	UNIT COST**	TOTAL COST*	UNIT COST**	TOTAL COST*	
PCO 110	52	\$6.93	\$ 360.00					\$ 360.00
PCO 111	1		\$ 12.00		\$ 1.00			\$ 13.00
PCO 112	3.05	\$28.87	\$ 88.00		\$ 83.00		\$ 5.00	\$ 176.00
PCO 113	23.23	\$28.87	\$ 671.00		\$469.00		\$ 34.00	\$1,174.00
PCO 114	27.22	\$28.87	\$ 786.00		\$572.00		\$ 39.00	\$1,397.00
PCO 115	32.7	\$28.87	\$ 944.00		\$591.00		\$ 47.00	\$1,582.00
PCO 116	18.86	\$28.87	\$ 545.00		\$315.00		\$ 27.00	\$ 887.00
PCO 117	15.70	\$23.88#	\$ 374.00		\$ 97.00		\$125.00	\$ 596.00
PCO 118						\$0.40	\$ 24.00***	\$ 24.00
TOTAL			\$3780.00		\$2128.00		\$301.00	\$6,209.00

\* Total cost rounded up or down to the nearest dollar.

\*\* Includes tax.

\*\*\* Cost for 6 barricades for 6 days and \$10.00 barricade pick-up cost.

# This is the average unit costs.

9 Modification No. P00052 extended the contract completion date 10 days from 29 April 1986 to and including 9 May 1986 (E-R4, tab 97).

10 Interest is addressed in summary *infra*.

11 Mr. Bybee credited to the Government \$39.14 (14 percent) of the total labor costs of \$547.96 JC claimed. Using the same formula the Board credits the Government \$16.31 (14 percent) of the total \$116.52 labor costs JC is found entitled to.

12 Mr. Bybee credited to the Government \$60.00 (7 percent) of the total backhoe labor costs of \$420.00 JC claimed. Using the same formula the Board credits the Government \$7.21 (7 percent) of the total \$103.06 backhoe costs JC is found entitled to.

13 We have taken JC's PCO submittals and combined the costs requested for the two days into one chart (see ex. A-4).

14 The Government's computation that  $\$28.87 \times 23.23 \text{ M/H} = \$671.00$  vice  $\$670.65$ .  
is reconciled by the fact that the Government rounded down or up to the next whole  
number. We note the discrepancy and for continuity repeat what is stated on the  
document.

15 The Board does not attempt to reconcile this amount with the amount claimed by JC,  
 $\$895.20$  (ex. A-6; E-R4, tab 118). Since the Board is deciding quantum the  
 $\$1,135.20$  will be used for determining JC's Estimate of Direct Cost.

16 The Government's computation  $\$28.87 \times 27 \text{ M/H} = \$786$  vice  $\$779.49$  is  
reconciled by the fact that the Government rounded down the total M/H to the  
nearest whole number. We note the discrepancy and for continuity state the correct  
M/H.

17 Mr. Bybee submitted separate cost proposals for each, the changed work and thrust  
block damage (ex. A-7). We rely on Mr. Bybee's PCO vice Ms. Butler's summary  
as a more reliable record of the costs incurred (finding 12 and Discussion *supra*).  
The Board has revised JC's PCO by ignoring the costs claimed for the thrust block  
since this portion of JC's entitlement appeal was denied. *J.C. Equipment  
Corporation, supra*, at 145,276.

18 The Board records the figures for station 22+75 only (ex. A-7). However, the Board  
is unable to reconcile its computations with Mr. Bybee's and, accordingly, will use  
its, the Board's, figures as the accurate and correct figures.

19 The Government's computation of  $\$28.87 \times 33 \text{ M/H} = \$944$  vice  $\$952.71$  is  
reconciled by the fact that the Government rounded up the total M/H to the nearest  
whole number. We note the discrepancy but for accuracy state the correct M/Hs.

20 Mr. Bybee submitted separate cost proposals for changed work and for thrust block  
damage (ex. A-8). We rely on Mr. Bybee's PCO vice Ms. Butler's summary as a  
more reliable record of the cost incurred (finding 12 and Discussion *supra*). The  
Board has revised JC's PCO by ignoring the costs claimed for the thrust block since  
this portion of JC's entitlement appeal was denied. *J.C. Equipment Corporation,  
supra*, at 145,277.

21 The certified payroll for 12 March indicated that Mr. Clark worked as the  
superintendent/operator and Mr. Tim Smith, a laborer, also worked as an operator for  
4 hours. However, the DRI for 12 March indicates the only operator was a  
superintendent/operator, Mr. Clark (ex. A-8).

22 See E-finding 137 and E-note 13.

23 The Government's computation  $\$28.87 \times 19 \text{ M/H} = \$548.53$  vice  $\$545.00$  is reconciled by the fact that the Government rounded up the total M/H to the nearest whole number. We note the discrepancy but for accuracy state the correct M/Hs.

24 The Government's computation  $\$28.87 \times 3 \text{ M/H} = \$88.00$  vice  $\$86.61$  is reconciled by the fact that the Government rounded the total M/H down to the nearest whole number. We note the discrepancy and for accuracy state the correct M/Hs.

25 We compute the material cost as follows: 27 LF of 2-inch pipe at  $\$3.28$  per LF =  $\$88.56$ ; 4-2-inch  $90^\circ$  bends at  $\$2.44$  each =  $\$9.76$ ; 2-2inch  $45^\circ$  bends at  $\$2.97$  each =  $5.94$ . Total material cost  $\$101.29$  minus credit of  $\$72.70$  (for 10 LF of 3-inch pipe at  $\$7.27$  per LF) =  $\$28.59$ .

26 Mr. Bybee's breakdown does not compute a credit for concrete although he does indicated the Government was entitled to a  $\frac{1}{2}$  unit. The Board, accordingly, has added a  $\$40$  credit for this oversight thereby raising the Government's total credit to  $\$503.56$  vice  $\$463.61$ .

27 Although the Government's 25 November 1987 letter stated that JC's PCO No. 63 was incorporated into Modification No. P00052, the Board could not establish this fact. (E-R4, tabs 97, 282)

28 To the extent Mr. Bybee found the Government entitled to a credit, we deducted this credit from the corresponding EA cost JC is found entitled to prior to mark-ups.

29 Labor costs include the labor M/H,  $\$166.20$ , and non-salaried operator's labor M/H,  $\$69.16$ , for a total of  $\$235.36$ .

30 Mr. Bybee in his breakdown stated the cost per hour for the pickups was  $\$8.75$  hour each. However, he then stated  $\$9.80$  was the unit cost of for each (finding 78 *supra*). JC failed to reconcile this discrepancy and we allow recovery of  $\$8.75$  for the one pickup for 17.5 M/H of use.

31 JC's BREAKDOWN ESTIMATE OF DIRECT COSTS and ESTIMATE FOR CHANGE ORDER for PCOs 106 and 107 were identical. Accordingly, we reproduce one chart applicable to both claims with the understanding that each claim is separate and we will decide quantum separately (E-tabs 129, 130; ex. A-14).

32

See note 29 *supra*.

33

Ms. Butler's testimony on this issue was as follows (tr. 2/27-29):

Q. What is the compensation and the basis for the compensation you're asking the Court to award you in quantum claim 18 at Exhibit A-18?

A. Exhibit A-18, claim number 43, speaks to delay. And I have - - on the first page marked number 1, I have the delay figured from April 22, 1986, to May 9, 1986, which would amount to 17 days at \$1,195 per day, equalling [sic] \$20,315.

....

Q. Okay. Why are you using a per-unit rate of \$1,195. What's the source and basis for your using that rate?

....

A. In Volume 3, tab 44, and I have to find the PCO. Excuse me (Perusing documents.) There is a PCO marked number 70 that speaks to delay being accepted at the amount of \$1,195 a day.

Q. Well does the PCO - - on the face of the PCO, does it state that or is that some sort of calculation you've applied to get to that number?

A. On the face, meaning on page 1, it states that for 34 calendar days - - no excuse me. For the period of time from November 14 to January 24, which equates to - - I believe it equates to more - - well, I'm not real sure without calculating it out.

What I did is took the amount of days that that would calculate to and divided it into the \$37,000 figure that's shown there. And I came up with the amount as \$1,195 per day.

34

*J.C. Equipment Corp. supra* at 145,288, Note 1.

35

Italicized portions of the document designate Mr. Bybee's and the ROICC's entries (E-R4, tab 690).

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 51321, Appeal of J.C. Equipment Corporation, rendered in conformance with the Board's Charter.

Dated:

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EDWARD S. ADAMKEWICZ  
Recorder, Armed Services  
Board of Contract Appeals