

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of –)
)
Staffco Construction, Inc.) ASBCA No. 51764
)
Under Contract No. F33601-97-C-W020)

APPEARANCES FOR THE APPELLANT: Robert E. Lachey, Esq.
Bradley C. Smith, Esq.
Flanagan, Lieberman, Hoffman
& Swaim
Dayton, OH

APPEARANCES FOR THE GOVERNMENT: COL Alexander W. Purdue, USAF
Chief Trial Attorney
Brady L. Jones, III, Esq.
CAPT Leonard L. Burrige, USAF
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE ROME

Staffco Construction, Inc. (Staffco) has appealed under the Contract Disputes Act, 41 U.S.C. § 606, from the final decision of the contracting officer (CO) denying Staffco's claim, on behalf of itself and its mechanical subcontractor, Eclectic Company (Eclectic). Appellant seeks an equitable adjustment due to the Air Force's provision of half-size drawings to Eclectic that were not so designated, resulting in an alleged underpricing of the mechanical work. The Board conducted a hearing in Dayton, Ohio. We decide entitlement only. For the reasons given below, we deny the appeal.

FINDINGS OF FACT

Eclectic's Receipt of Half-Size Drawings

On 8 July 1996 the Operational Contracting Division (OCD) at Wright-Patterson Air Force Base (WPAFB), Ohio issued a pre-solicitation notice for project No. WP 900039 for repairs to the basement of building 10262 (building 262), to be accomplished during the contract's base year, and for other work, covered by options (SR4, tab 29 at 2).

WPAFB had provided original full-size 42 by 30-inch project drawings to the Government Printing Office (GPO) in Columbus, Ohio, and had requisitioned full-size copies of each drawing. GPO had awarded the printing contract to City Blue Printing Company (City Blue), which mistakenly had produced drawings measuring 21 by 17 inches.

City Blue delivered those drawings to WPAFB on 19 July 1996. (SR4, tabs 40-43, 93; tr. 2/468, 479, 573-74) City Blue's drawings are referred to by the parties and herein as "half-size", although with respect to physical area covered, they are essentially one fourth the size of the full-size drawings ordered. City Blue did not label the drawings as half-size or reduced in size. (Compare R4, tabs 6 and 7; ex. A-4; tr. 2/450)

The Air Force notified GPO that the half-size drawings were unacceptable (SR4, tabs 40, 42; tr. 2/439). On 23 and 24 July 1996, GPO informed City Blue it was to reprint them in accordance with the specified 42 by 30-inch trim size (SR4, tab 43 at 1, tab 44). WPAFB received the full-size drawings from City Blue on 7 August 1996 (*see* SR4, tab 44; ex. G-1).

The Government alleges that the half-size drawings were destroyed promptly. WPAFB's civil engineering section received three sets and threw them away. OCD received several sets. Civil engineering had intended to request that OCD destroy them, but there is no persuasive evidence that the request was made and the Air Force did not offer evidence from anyone who had participated in or witnessed the alleged destruction. (Tr. 2/420, 440, 450-51)

OCD had placed the half-size drawings in at least one readily visible large open box in the back corner of its supply room in building 1 at WPAFB. When it was time to mail a solicitation to prospective bidders, contracting personnel from building 1 would deliver the materials to be mailed to procurement technicians in building 260, known as the "bid room". The technicians could also pick up the materials themselves from building 1. Additionally, OCD would place copies of the solicitation package, including the drawings, in the bid room for purchase or review by bidders. (Tr. 2/421, 511-16, 537, 3/688, 698-99, 747, 753-54, 763-65)

During August 1996 at least 15 procurements were in process. Individuals who had experience with solicitation mailings, but were not primarily assigned to that work, assisted with the mailings (tr. 2/533-35, 540-41, 556-58, 3/698, 727). On 14 August 1996 the Air Force issued the sealed-bid solicitation for the project at issue (R4, tab 1). It mailed the solicitation package to Eclectic on Friday, 16 August 1996 (ex. A-2). On Tuesday, 20 August 1996, WPAFB ordered more full-size drawings from GPO because its supply had been exhausted, on a date not specified in the record (*see* SR4, tab 53A at 3; tr. 2/524-25, 3/732-33).

Ronald M. Wantz, Eclectic's president, and Steven Eick, Eclectic's project manager, testified that, although they did not realize it until after contract award, Eclectic's solicitation package contained half-size drawings (tr. 1/157, 173-76, 2/322, 327, 335). Eclectic produced original half-size drawings at the hearing (ex. A-4; tr. 1/161-62, 2/327, 335).

The evidence establishes that there was the potential for a mistaken mail-out of half-size drawings by OCD. The Air Force offered no countervailing evidence as to how Eclectic could have acquired them. Accordingly, we find that OCD mistakenly mailed them to Eclectic, although it had not intended to distribute half-size drawings to any bidder.

Solicitation and Specification Provisions

The solicitation incorporated by reference the FAR 52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995) clause, which provides in part that “offerors or quoters are urged and expected to inspect the site where the work will be performed” (R4, tab 1 at 31, ¶ L-124). The solicitation named Bob Kesner as the project’s site visit representative and gave his telephone number (R4, tab 1 at 1).

The solicitation also incorporated by reference the FAR 52.214-6 EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984) clause, which provides in relevant part that:

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding.

(R4, tab 1 at 29)

Division 15 of the specifications, § 15010, Mechanical Provisions, ¶ 1.04, Drawings, provided in relevant part that:

F. Verification of Dimensions: The Contractor should visit the premises before date of invitation for bids . . . and thoroughly familiarize himself with all details of the work and working conditions and verify all dimensions in the field, and shall advise the contracting officer of any discrepancies before above date.

(R4, tab 5 at 195)

Staffco’s and Eclectic’s Pre-Bid Reviews

On 23 August 1996 Mike Stafford, appellant’s president, visited the bid room to obtain a solicitation package but no more were then available (SR4, tab 54; tr. 1/27). On 29 August 1996 GPO’s new printing contractor, Alabama Blueprint Co., delivered full-size drawings to the bid room (SR4, tab 93, last page). On 9 September 1996 Mr. Stafford

picked up a solicitation set from the bid room. The drawings Staffco received were full-size and easy to read. (SR4, tab 54; tr. 1/28-29)

Prior to this project, Eclectic had received numerous WPAFB solicitation packages, all of which had contained full-size drawings, and it had bid, unsuccessfully, upon WPAFB jobs (tr. 1/227-28, 2/346-47). Mr. Wantz knew that the project drawings Eclectic had received were not the same size as the full-size drawings it had received previously from WPAFB (tr. 2/348-49).

Eclectic did not raise its concerns about the project drawings in writing. Rather, at some point pre-bid, Mr. Wantz telephoned contract specialist Dwight Deardorff, WPAFB's point of contact for project solicitation requests and routine inquiries, and asked whether there were any other drawings he could send. (SR4, tab 29 at 2; tr. 3/682, 698) The parties disagree about the scope of and response to his inquiry. Mr. Wantz, after-the-fact, prepared a memorandum of the call which contains obvious inaccuracies and is not credible (ex. G-8; tr. 1/211-12, 2/386-87). Although he did not recall Mr. Wantz in particular, Mr. Deardorff testified that a gentleman telephoned that he could not read the project drawings and asked for another set, but did not specify a reason for his difficulty. Mr. Deardorff testified that he responded that he did not have extra sets, but that the caller could go to the bid room, where a set was maintained. (Tr. 3/698, 728, 730) Prior to bid submissions, Mr. Deardorff heard that there had been a half-size drawings problem, but he did not recall whether he had heard this before or after the telephone inquiry. He never saw any half-size drawings and no bidder notified him that it had received such a set (tr. 3/702, 727-31). Mr. Wantz acknowledged that he did not raise that prospect (tr. 2/368).

We find, based upon the credible evidence, that Mr. Wantz informed Mr. Deardorff that he was having trouble reading the drawings, without discussing their size, and that Mr. Deardorff responded that he had no extra drawings to send, but that a set was available in the bid room for review (tr. 3/698, 728, 730). We further find that appellant has not proved that the procuring contracting officer, administrative contracting officer, contract specialist or other officials responsible for the procurement knew that any half-size drawings had been mistakenly mailed out (tr. 2/511, 523, 535-36, 3/752-54, 761, 875).

Eclectic was located in Dayton, Ohio, about 10 to 12 miles from the bid room, but Eclectic did not review the drawings available there (tr. 1/201, 2/360). Also, Eclectic and Staffco subscribed to the Dodge Report, which listed construction projects up for bid, including the WPAFB project, and potential bidders, including Staffco. The Dodge Report noted that it maintained project drawings at its local office, near Dayton. Eclectic did not review the Dodge Report's drawings and did not ask to see Staffco's drawings pre-bid. (Ex. A-1; tr. 1/50-51, 78, 201-02, 2/369, 3/864)

Mr. Stafford had worked on many prior WPAFB projects involving building 262, but he did not recall whether he had worked in its basement. On 16 September 1996 he visited

the project site with WPAFB's site visit representative, Mr. Kesner, who had a set of full-size project drawings. (SR4, tab 56; tr. 1/48-49, 3/607-10, 627-28) Eclectic, and Mr. Wantz personally, had not worked in building 262 before (R4, tab 22 at 2; tr. 2/353). In 1990, although his work had not involved the mechanical rooms, Mr. Eick had done some remodeling in building 262's basement for a contractor other than Eclectic (tr. 2/315-16). Eclectic did not make a pre-bid project site visit (tr. 1/199, 219, 2/337, 353).

Eclectic's and Staffco's Bids and Contract Award

On 23 September 1996, shortly before bid opening, Eclectic faxed to Staffco Eclectic's quotation to perform the mechanical work, including heating and air conditioning (HVAC) and plumbing, on the project. Eclectic's base year price was \$694,473. Its total bid, including option years, was \$2,526,226. (SR4, tab 59; tr. 1/37, 54-55) Mr. Eick had prepared Eclectic's bid (SR4, tab 59; tr. 1/161, 223, 2/328, 353). To accomplish his "take-offs" from the drawings he had used a scale master, a device that converts drawing dimensions into feet and inches. He had used the drawings' written scale of 1" = 20' to set the scale master, not their graphic bar scale, in which one measured inch was denoted as "40". (See tr. 1/161-64, 167-68 and findings below.)

Eclectic's bid was the only one Staffco received for the mechanical work. Mr. Stafford was not familiar with Eclectic and had no time to inquire about the company prior to submitting Staffco's bid. At the time he submitted Staffco's bid, Mr. Stafford did not know that Eclectic had based its bid upon half-size drawings. Staffco did not do its own take-offs for the mechanical portions of the project from its full-size drawings; it relied entirely upon Eclectic's quote. Mr. Stafford did not see anything on the face of the quote to lead him to question it and he incorporated it into Staffco's bid. (Tr. 1/32, 39-40, 58, 90-91, 143)

Staffco's bid for the base year and option years was \$7,201,000. It was the apparent low bidder. (R4, tab 3 at 3; SR4, tab 60) By letter dated 24 September 1996, the CO requested that Staffco verify its bid because the total of the individual line items did not match the total stated price. He asked that Staffco verify the price of each item and conduct a complete review, including of the drawings, to ensure that all job elements had been priced correctly. He set forth the procedures for alleging a mistake in bid. (R4, tab 8 at 1) Mr. Stafford responded that he had reviewed the bid; that all individual line items were correct; that he had erred in totaling the items; and that Staffco's total bid was actually \$7,166,000 (R4, tab 8 at 2). He did not ask Eclectic to verify its bid (tr. 1/67).

On 6 December 1996, over two months after bid opening, Staffco and Eclectic entered into a subcontract in the amount of \$694,473, covering the base year's mechanical work, with the potential for option work at Eclectic's bid prices. The subcontract was subject to the terms, specifications and drawings of Staffco's anticipated forthcoming contract with the Air Force. (SR4, tab 65 at 1, 2, 2A) The Air Force awarded firm fixed-

price Contract No. F33601-97-C-W020 to Staffco on 12 December 1996, in the total amount of \$7,166,000, including \$2,900,000 for the base year work (R4, tab 3 at 1, 2).

Between the time of bid opening and Eclectic's execution of its subcontract with Staffco, and prior to the Air Force's award of the prime contract to Staffco, Messrs. Wantz and Eick conferred with Mr. Stafford, including meeting with him at Staffco's office, where he kept a set of full-size project drawings. They mentioned to Mr. Stafford that Eclectic's set of drawings was one of the worst they had seen; various aspects were hard to distinguish; and the take-off from the drawings to arrive at Eclectic's estimate had been difficult. However, they never asked to see Staffco's drawings and Mr. Stafford never suggested that they look at them. (Tr. 1/77-78, 2/370)

Facts Pertaining to Half -Size Drawings

Eclectic had had prior experience with half-size drawings from the U.S. Army Corps of Engineers but they had always been so marked (R4, tab 11; ex. A-3; tr. 1/192-93, 2/339-40, 350). James Balsamo, chief of design in WPAFB's civil engineering section, considered it to be industry standard that out-of-scale drawings bear a legend so indicating (tr. 3/826, 846).

The half-size drawings at issue contained the statement "SCALE 1" = 20". Immediately above that written scale was a graphic bar scale in which one measured inch was denoted as "40" (See ex. A-4, drawing M-1). According to professional engineer C. Jeffrey Tefend, who designed the project and prepared the mechanical drawings, the graphic scale is the "true" scale of a drawing (tr. 3/768, 770, 823). As Mr. Stafford, Mr. Tefend and Mr. Balsamo agreed, the graphic scale remains accurate despite a reduction in drawing size (tr. 1/133, 3/818, 854-55). Whereas the written scale was incorrect on the half-size drawings, the graphic scale was correct. A comparison of the written scale and the graphic scale would have revealed that the drawings were half-size. (Tr. 1/133, 3/822-23, 854-55)

Some of the half-size drawings, including those covering HVAC and bathroom and plumbing work to be performed by Eclectic, and which Mr. Eick used in preparing Eclectic's bid estimate, contained written "hard dimensions" that conflicted with the written scale of 1" = 20' (tr. 1/122-24, 231, 235, 238-39, 254-56). Mr. Eick defined a "hard dimension" as "a number that is put on the print instead of leaving it up to someone to scale it off. That is the dimension it has to be" (tr. 1/239). He acknowledged that the hard dimensions conflicted with the measured dimensions on the half-size drawings. A comparison of the hard and measured dimensions would have revealed that the measured dimension was one-half of the hard dimension. (See ex. A-4, drawing A5 at detail 8A5, drawings M2, M6; tr. 1/251-52, 3/802-03)

Additionally, use of the written scale resulted in non-standard, unreasonably short, distances between walls, urinals, toilets and sinks in the basement bathroom where Eclectic was responsible for plumbing and bathroom demolition work (*see* tr. 1/121-24, 235, 3/633-36, 803-06).

Based upon the foregoing, we find that dimensional conflicts, including the conflicting written and graphic scales and the differences between measured dimensions and given hard dimensions, were apparent on the face of the half-size mechanical drawings.

We also find that a pre-bid site visit by a reasonably prudent bidder in Eclectic's position would have resolved matters for several reasons: (1) the bidder would have had the opportunity to verify actual dimensions, and to report upon any discrepancies in its half-size drawings, as directed by the specifications; (2) even if it did not undertake a detailed dimension check, at least some of the dimensional discrepancies would have been obvious upon visual examination of the work to be accomplished and the work setting; and (3) WPAFB's site visit representative had a set of full-size drawings available for review.

Eclectic's and Staffco's Claims

By letter to Mr. Stafford dated 11 April 1997, 10 days after the notice to proceed, Eclectic claimed that the drawings it had been issued for bidding purposes were one-half the scale of working drawings it had just received from the Government and that this would cause the labor and material to double for the duct and plumbing portion of the work (R4, tab 9 at 3, tab 10 at 2). On 3 November 1997, Staffco submitted a claim, uncertified, in the amount of \$481,721.89, which included Eclectic's claim of \$417,075.23, plus Staffco's alleged overhead and profit. The CO denied the claim. (R4, tabs 21, 24) Staffco appealed to the Board, which dismissed the appeal without prejudice due to the lack of claim certification (*see* R4, tabs 26, 27). On 22 June 1998 Staffco resubmitted its claim, with a certification. The CO again denied it. (R4, tabs 27, 28) On 21 September 1998 Staffco timely appealed to the Board.

DISCUSSION

Appellant alleges that the Government breached its implied warranty of the suitability of its drawings for their intended use by providing drawings to Eclectic that were half-size but not so labeled, rendering them defective, and that the Government thereby constructively changed the contract, entitling appellant to an equitable adjustment. Appellant asserts that, in the absence of a warning that the drawings were half-size, their out of scale condition was a latent defect. It adds that, in any case, WPAFB's knowledge that half-size drawings existed and its failure to warn Eclectic when Eclectic inquired about the quality of its drawings, and to amend the solicitation to warn bidders that half-size drawings had been prepared and potentially distributed, superseded Eclectic's duty to recognize and

seek clarification of drawing discrepancies. Appellant is not seeking contract reformation based upon an alleged mistake in bid (app. reply br. at 11).

The Government contends, *inter alia*, that, even if Eclectic received half-size drawings (as we have found), Eclectic failed to submit a pre-bid written request for clarification of drawing measurements, as required by the solicitation's Explanation to Prospective Bidders clause; it did not conduct a site visit; appellant and Eclectic did not comply with the specifications' requirement for pre-bid verification of dimensions; appellant did not communicate with Eclectic when directed to verify its bid; and Eclectic did not satisfy its duty to inquire about the conflict between the half-size drawings' written and graphic scales and other obvious dimension discrepancies, which were patent ambiguities.

First, appellant Staffco received full-size drawings that were easy to read. This would have ended the matter except that, in submitting its bid to the Government, appellant relied entirely upon Eclectic's interpretation of the contract drawings' requirements for the mechanical portion of the contract work, as reflected in Eclectic's quote, the only quote appellant received for that work. When it submitted its bid, appellant was unaware that any half-size drawings existed and that Eclectic had based its quote upon such drawings. Under these circumstances, appellant has adequately established reliance for purposes of pursuing its equitable adjustment claim. *Froeschle Sons, Inc. v. United States*, 891 F.2d 270 (Fed. Cir. 1989).

The court of appeals has applied a patent ambiguity analysis in cases, as here, of unlabeled half-size drawings with an erroneous scale and conflicting hard dimensions, *Bromley Contracting Company, Inc. v. United States*, 227 Ct. Cl. 569 (1981), and of drawings with a correct graphic scale and erroneous written scale. *Wickham Contracting Co., Inc. v. United States*, 546 F.2d 395 (Ct. Cl. 1976). It is fundamental that:

The existence of a patent ambiguity in a government contract "raises the duty of inquiry, regardless of the reasonableness of the contractor's interpretation." That duty requires the contractor to inquire of the contracting officer as to the true meaning of the contract before submitting a bid. Absent such inquiry, a patent ambiguity in the contract will be resolved against the contractor.

Triax Pacific, Inc. v. West, 130 F.3d 1469, 1474-75 (Fed. Cir. 1997) (citations omitted). Determining whether an ambiguity is patent involves an objective judgment as to whether it is so glaring as to raise a duty to inquire. *Newsom v. United States*, 676 F.2d 647, 649-50 (Ct. Cl. 1982). In reaching that judgment, we consider whether the ambiguity "would be apparent to a reasonable person in the claimant's position." *Lockheed Martin IR Imaging Systems, Inc. v. West*, 108 F.3d 319, 322 (Fed. Cir. 1997).

We have found that the graphic scale and the hard dimensions on the half-size drawings remained accurate regardless of the reduction in drawing size and that the dimensional conflicts in the drawings were obvious. In our judgment, these ambiguities should have been readily apparent to a prospective bidder for the mechanical work, in the exercise of reasonable care. Thus, the half-size drawings were patently ambiguous, imposing upon Eclectic a duty of inquiry.

Eclectic did not discharge that duty. It failed to raise its concerns with its drawings in writing, as called for by the solicitations' Explanation to Prospective Bidders clause. With regard to Mr. Wantz's general oral inquiry about the legibility of Eclectic's drawings, even if Mr. Deardorff had learned of the erroneous production of half-size drawings before he spoke to Mr. Wantz, Eclectic neglected to pursue the reasonable solution to its problems Mr. Deardorff proposed. Whether or not Eclectic, which had bid on other WPAFB jobs, was aware of WPAFB's standard practice of maintaining a set of full-size drawings in the bid room for review, which is not clarified in the record, Mr. Deardorff notified Mr. Wantz that a set was available there. This would not have required undue effort by Eclectic; the bid room was not far from its offices.

Moreover, despite the solicitation's Site Visit clause, which urged bidders to visit the site, Eclectic did not do so. If it had, WPAFB's site visit representative would have had a set of full-size drawings available. Similarly, despite its difficulties in reading the drawings, Eclectic disregarded the solicitation's "Verification of Dimensions" provision pertaining to the mechanical drawings, which stated that a prospective contractor should visit the premises pre-bid and thoroughly familiarize itself with the work details; verify all dimensions in the field; and advise the CO of any discrepancies pre-bid. We have found that a pre-bid site visit by a reasonably prudent bidder in Eclectic's position would have resolved matters.

Pre-bid, Eclectic also could have obtained or viewed a set of contract drawings through the Dodge Report or through Staffco. Further, as we have found, between the time of bid opening and Eclectic's execution of its subcontract with Staffco, and prior to award of the prime contract to Staffco, Messrs. Wantz and Eick met with Mr. Stafford at Staffco's office, where he had full-size project drawings. Although they mentioned to him that Eclectic's set of drawings was one of the worst they had seen and Eclectic's take-off had been difficult, they never asked to see Staffco's drawings and Mr. Stafford never suggested that they examine them, despite the fact that Staffco's drawings were full-size and easy to read.

Thus, Eclectic had several opportunities pre-bid, and appellant and Eclectic had a key occasion post-bid, but prior to contract award, to avoid the damages of which they complain.

Appellant urges that the Government's failure to warn potential bidders about the existence of half-size drawings supersedes Eclectic's duty to inquire about the patent ambiguities in those drawings, citing the ASBCA's decision in *Wickham Contracting Co., Inc.*, ASBCA No. 19069, 75-1 BCA ¶ 11,248 (app. br. at 16, 20). In effect, appellant contends that the Government breached its duty to disclose superior knowledge to prospective bidders. The Federal Circuit has described the superior knowledge doctrine as follows:

The superior knowledge doctrine imposes upon a contracting agency an implied duty to disclose to a contractor otherwise unavailable information regarding some novel matter affecting the contract that is vital to its performance. The doctrine of superior knowledge is generally applied to situations where: (1) a contractor undertook to perform without vital knowledge of a fact that affects performance costs or duration; (2) the government was aware the contractor had no knowledge of and had no reason to obtain such information; (3) any contract specification supplied misled the contractor or did not put it on notice to inquire; and (4) the government failed to provide the relevant information.

Giesler v. United States, 232 F.3d 864, 876 (Fed. Cir. 2000) (citation omitted).

In *Wickham*, the contractor alleged extra costs because it had calculated its bid based upon an incorrect numerical scale on a Government drawing. As here, the graphic scale was accurate. The Government's estimator discovered the scale error before bids were submitted but did not initiate an amendment to the invitation for bids and did not report the error to the CO. The Board found that the error was manifest but that the contractor had not recognized the error until it was asked to verify its bid. It then notified the bid opening officer of the drawing error but proceeded to confirm its bid, despite being afforded the opportunity to seek withdrawal based upon mistake. The Board denied the appeal, stating:

Other things being equal, we might well regard the Government's duty to disclose its actual knowledge to the bidders, including appellant, as a higher duty superseding a bidder's duty to recognize and seek clarification of an obvious drawing error of which it did not have actual knowledge. However, in the present case later events presented appellant with a last clear chance to avoid damage from the drawing error.

75-1 BCA ¶ 11,248 at 53,580

In sustaining the Board's denial of the appeal, the Court of Claims held that the contractor had acted unreasonably and was not entitled to a price adjustment based upon an error of which it was aware prior to contract award. *Wickham Contracting Co., Inc. v. United States, supra*, 546 F.2d at 401. The court concluded that, under the circumstances, it need not resolve the questions of whether the Board had properly imputed knowledge to the CO of the drawing error or whether the Government's duty to disclose superior knowledge predominated over the bidder's duty to seek clarification of a patent drawing ambiguity.

We, too, need not resolve appellant's "superseding duty" contention, because appellant has not met its burden to prove that the Air Force breached its duty to disclose superior knowledge. Preliminarily, in contrast to *Wickham*, WPAFB's project solicitation distribution for the most part did not include erroneous drawings. Staffco's drawings were full-size. The base did not intend to issue half-size drawings; it sent them to Eclectic by mistake. Indeed, appellant has not established that the responsible procurement officials knew that any half-size drawings had been distributed. Appellant has not satisfied the factors set forth above necessary to sustain a superior knowledge claim.

DECISION

The appeal is denied.

Dated: 28 June 2002

CHERYL SCOTT ROME
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

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

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. 51764, Appeal of Staffco Construction, Inc., rendered in conformance with the Board's Charter.

Dated:

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