

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
The Sherman R. Smoot Corp.) ASBCA No. 52261
)
Under Contract No. N62477-94-C-0028)

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OPINION BY ADMINISTRATIVE JUDGE JAMES

This appeal arises from the contracting officer's (CO) final decision denying The Sherman R. Smoot Corp.'s (Smoot) floor layout change claim. The Board has jurisdiction of this appeal under the Contract Disputes Act of 1978, 41 U.S.C. § 607. After a 10-day hearing, the parties have submitted post-hearing and reply briefs. The Board is to decide both entitlement and quantum in this appeal (tr. 12).

Under the captioned contract, the Board consolidated ASBCA Nos. 52145, 52146, 52147, 52148, 52149, 52150, 52173, 52261, 53049, 53115 and 53246. Appellant withdrew ASBCA Nos. 52145, 52146, 52147 and 52148 with prejudice (tr. 37, 80). (*See* Board's 14 November 2001 ORDER OF DISMISSAL.) The Rule 4 documents for those

four dismissed appeals, however, remain in the record (tr. 11-12). Citations to Rule 4 documents herein identify the appeal in which the document was filed.

FINDINGS OF FACT

1. On 3 May 1996, the Navy awarded Smoot Contract No. N62477-94-C-0028 (contract 28) for the firm fixed-price of \$19,073,139, to complete the Navy's renovation design, to demolish building 33A and a small portion of building 37, to renovate buildings 33, 37, 39, and 109, and to construct a "Link" building at the Washington Navy Yard (WNY) by 31 December 1997 (ASBCA 53115, R4, tab 1 at 2, ASBCA 52173, R4, tab 1 at spec. § 01010, ¶ 1.2.1).

2. Contract 28 incorporated by reference the standard fixed price construction contract terms and conditions, including the FAR 52.236-2 DIFFERING SITE CONDITIONS (APR 1984), 52.242-14 SUSPENSION OF WORK (APR 1984), and 52.243-4 CHANGES (AUG 1987) clauses (ASBCA 52173, R4, tab 1 at 00721-12, Amend. 0004 at 4 of 13).

3. Contract 28 provided that for contract modifications with a cumulative value up to 10% of the original contract price, *i.e.*, \$1,907,314 (10% of \$19,073,139), the parties were to apply to the direct costs, 10% for field overhead, 6% for prime's overhead on subcontractor costs, 4% for prime's home office overhead, and 6% for prime's profit, and field overhead costs were not to be treated as direct costs (ASBCA 52145, R4, tab 2 at 4).

4. By unilateral Modification No. A00002 on 23 August 1996, the CO extended contract 28's completion date by 68 days to 9 March 1998 due to a delayed notice to proceed (ex. A-185 at 12).

5. By unilateral Modification No. A00135 on 4 March 1998, contract 28's completion date was extended by 58 calendar days to 6 May 1998, including 51 days for Proposed Change Order (PCO) No. 172 and 7 days for Government delay in directing removal and disposal of lead contaminated paint (ex. A-185 at 30-31).

6. The 4 March 1998 "BI-WEEKLY SUMMARY" of LT Michael J. Zucchero, Navy Project Engineer, described contract 28's construction status and completion date:

Rough mechanical, electrical, and plumbing near completion in all buildings. Drywall work complete in B-33, continuing on all floors of quadrangle buildings [37, 39, 109]. Slate roofing on all buildings is near completion, area at bottom near pole-gutter system remains. Stairwells in B-33 are complete. Suspended ceiling and access flooring work progressing well in all buildings. Link windows installed. Permanent power and

heat is on to all buildings. Elevators near completion. Bathroom finish work ongoing. Bell Atlantic voice/data lines to be installed during April. Concrete pavers being installed in courtyard.

....

We feel that the present CCD [contract completion date, 6 May 1998], including the lead contamination and clean-up delay, is obtainable, provided no future time delays occur. The contractor agrees with this assessment and is tracking to complete on 6 May 1998.

(Ex. A-62 at S007541-42)

7. On 26 March 1998, the CO issued unilateral Modification No. A00178 (A00178), changing the floor layout of WNY buildings 33, 39 and 109 pursuant to plans and specifications for the ordered changes, within the “not to exceed” amount of \$75,000 for the “effort expended,” defined as the “direct costs” of the change order, and extending the contract completion date by 14 calendar days to 20 May 1998 (ex. A-185 at 49-50).

8. A00178 caused the changed floor layout activities predominantly to become the critical path to contract completion (tr. 392-93, 395).

9. Smoot’s architect, Shalom Baranes Associates, completed the design and prepared construction drawings for the A00178 space changes, including designing and selecting partition materials, developing door and hardware schedules, modifying air conditioning distribution, adding and relocating lighting fixtures, and procuring “long lead items,” namely, demountable partitions, variable air volume (VAV) boxes and lighting fixtures. Smoot’s floor layout redesign work affected ceilings, floors, walls, and painting in spaces that were previously completed. (Tr. 385-90)

10. LT Zucchero’s 15 April 1998 “BI-WEEKLY SUMMARY” described the contract 28 construction status:

Rough mechanical, electrical, and plumbing near completion in quad buildings. Drywall work complete in B-33, near completion in quadrangle buildings. Slate roofing on all buildings is complete, minor repairs to nw corner remain. Suspended ceiling complete in B-33 and near completion in quad. Access flooring work complete. Carpet installation and demountable partitions installation continue to progress well.

Aisle and primary space lighting being installed. Elevators near completion, testing remains. Bathroom finish work ongoing. Bell Atlantic voice/data lines being installed during April. Courtyard concrete paver installation complete. Storm windows near completion in B-33.

....

We feel that the present CCD [6 May 1998, sic] may move back as a result of the NAVFAC space layout changes. The facility should be acceptable by 1 June 98, with only a few "layout change" type items remaining for a few weeks

(Ex. A-62 at S007543-44)

11. On 18 June 1998, the CO issued unilateral Modification No. A00188, which provided no price increase, and extended the contract completion date by 47 additional calendar days to 6 July 1998 for all contract work except for the A00178 floor layout changes, which to the extent they were not completed, were to be treated as punch list items (ex. A-185 at 51-52).

12. On 6 July 1998, the Navy accepted the four renovated WNY buildings as substantially complete. During the period 30 April to 14 August 1998, Smoot continued to perform the layout change work along with original contract work, all of which had become punch list work by 6 July 1998. (ASBCA 52261, R4, tab 3 at 1; tr. 393-94).

13. On 6 August 1998, the CO sent Smoot proposed bilateral Modification No. A00197, which included a contractor release of claims and stated:

Modification A00178 . . . in the amount of \$75,000.00 was issued unilaterally to direct the contractor to proceed with a change(s) to the contract. The purpose of this modification is to definitize Modification A00178 and to reflect an increase in the total contract value of \$126,965.74. The total negotiated settlement is \$201,965.74 for the work described in Modification A00178.

Smoot's 18 August 1998 letter returned that modification unsigned to the CO, stated that it could not accept the release, and said that it would submit a cost proposal designated PCO No. 251.1 for the extended performance period. (ASBCA 52261, R4, tab 4 at 4-6)

14. On 29 September 1998, the CO issued unilateral Modification No. A00197 setting forth the same terms and conditions as the rejected bilateral form of the modification (ASBCA 52261, R4, tab 4 at 1). The record does not show what portion of the \$201,965.74 Smoot received was direct costs, and what portion was indirect costs.

15. Smoot's 13 October 1998 letter to the CO regarding "PCO #251.1 (Changes to Floor Layout-Extended Overhead)," requested \$349,827. Smoot attached an estimate in which: (a) Smoot claimed \$91,151.54 for direct material, labor, insurance, taxes and fringe costs; (b) Smoot's subcontractors requested \$237,297, including the claims of C.J. Coakley Co., \$55,919 for Eichleay home office overhead for 107 days (29 April to 14 August 1998); Hess Mechanical Corp., \$5,840 for 20 days at two daily rates (including \$188.91/day for Eichleay extended overhead); CTI Consultants, Inc., \$25,065 for 51.5 days at \$486.70/day calculated at its CQC Manager's payrate at 10 hours per day with a 3.1 multiplier; Mona Electrical Construction, Inc., \$144,668 for direct costs, extended job expenses, extended G&A costs, profit and bond costs; Shalom Baranes Associates, \$16,277 for direct labor, other direct costs, overhead, profit, and its subcontractor Syska & Hennessy's direct labor costs; less a \$10,472 "credit for overhead received in Modification A00197"; and (c) Smoot claimed \$19,706.91 profit at 6% on the subtotal of (a) + (b), and \$1,671.15 bond premium at .48% of the total. (ASBCA 52261, R4, tab 2 at 1-18)

16. The CO's 2 November 1998 letter to Smoot denied its 13 October 1998 request for compensation, and asserted that—

... The contract completion date was extended from May 6, 1998 to July 6, 1998 as a result of the NAVFAC Layout Change. The direct costs and associated field and home office overhead costs for the prime and all applicable subcontractors were agreed upon and a modification was issued to cover these costs (modification #178 [sic, probably meant # 197]). However, no compensation was given for extended overhead as a result of this change because of the concurrency with this changed work and your continuing efforts to complete other contract work.

(ASBCA 52261, R4, tab 3)

17. In connection with Hess Mechanical's payment request No. 38 for the \$59,056 subcontract retainage, on 8 November 1998 Hess executed a general release of Smoot and the owner, *i.e.*, the Government, from liability for all claims with respect to Hess' WNY subcontract (ex. G-142 at 2).

18. Smoot’s 21 January 1999 letters to the CO certified its PCO No. 251.1 claim in the revised, rounded amount of \$296,210, including (a) \$91,151.54 for Smoot’s direct costs, (b) \$186,957.00 for subcontractors Hess, CTI, Mona, and Shalom (which did not modify their former claims), and Coakley, which reduced its claim to \$5,579 for the “actual time” less the “estimated time” of supervision and overhead on 23 specified days in May-July 1998, less a \$10,472 “credit” for Modification A00197, and (c) Smoot’s \$16,686.51 profit at 6% of the subtotal of (a) + (b) and \$1,415.02 bond premium at .48% of the total. The CO received Smoot’s claim on 28 January 1999. (ASBCA 52261, R4, tab 4 at 1, 7-35)

19. The CO’s 26 May 1999 final decision denied Smoot’s 21 January 1999 claim in its entirety (ASBCA 52261, R4, tab 5). On 13 July 1999, Smoot timely appealed that final decision to this Board.

20. As of 19 January 2000, when the latest contract modification in the appeal record was issued, the amended contract price was \$22,142,988, which exceeded the \$19,073,139 original contract price by \$3,069,849 (ASBCA 53115, R4, tab 14 at 2; finding 1).

21. At trial, Mona Electrical reduced its claim to \$67,854, broken down as follows:

<u>Cost Element</u>	<u>Amount</u>
Wage escalation	\$ 1,507
Safety talks & inspections	\$ 894
Additional field expenses	\$28,294
Extended overhead/G&A	<u>\$30,480</u>
Subtotal	\$61,174 [sic]
Profit at 10%	\$ 6,174 [sic]
Subtotal	\$67,348
Bond at .75%	<u>\$ 505</u>
Total adjustment	\$67,854 [sic]

Mona reduced the third item to \$28,294 to eliminate a \$6,000 duplication in its previous calculation. (Exs. A-313 at 1-8, A-217 at 65-66, 125, 127, 134, 155, A-298 at 3, A-288, A-308 at 15, 30, A-313; tr. 1244, 1248, 1342-63). Such \$81,813.67 subcontract claim reduction, including Smoot’s mark-ups (\$76,814 Mona reduction + \$4,608.84 Smoot profit at 6% + \$390.83 Smoot bond at .48%), thereby reduced Smoot’s claim to \$214,396.33 (\$296,210 - \$81,813.67). Smoot’s revised \$214,396.33 claim included Eichleay extended home office overhead of \$30,480 for Mona (*supra*) and \$3,778.20 for Hess (\$188.91 x 20, finding 15), totaling \$34,258.20.

22. Smoot submitted its “Transaction Inquiry and List” records for Job No. “DC9603, NAVFAC Bldg. 33,” which substantiated that during the period 30 April to 14 August 1998 Smoot incurred \$49,924.39 in direct labor costs and \$14,166.47 in direct material costs. The Defense Contract Audit Agency (DCAA) accepted Smoot’s 48.03% rate for insurance, taxes and fringe benefits and .48% rate for bond premium. The Government has not challenged a 6% profit rate for Smoot. Thus, Smoot incurred \$23,978.68 for insurance, taxes and fringe benefits ($\$49,924.39 \times .4803$). (ASBCA 52261, R4, tab 2 at 23-25, tab 4; ex. A-188 at 9, 13).

23. Smoot’s subcontractors CTI Consultants, Hess Mechanical, and C.J. Coakley, submitted no company books, records or other evidence to substantiate the costs alleged in their subcontract claims (ASBCA 52261, R4, tab 2 at 4-22, tab 4 at 10-35). Shalom Baranes substantiated 24 “senior architect” direct labor hours for PCO 251 work, which with burden and profit amounted to \$1,432.28 (ASBCA 52261, R4, tab 2 at 17-19).

24. Subcontractor Mona Electrical submitted its 31 December 1998 Statement of Income showing all contract revenue, G&A expenses and WNY Building 33 subcontract revenue for 1998; its calculation of \$30,480 in *Eichleay* extended overhead costs for 106 days, excluding four items of unallowable costs; and a “Job Detail Transaction Report” of accounting information showing that from 6 May to 2 September 1998 Mona incurred \$19,135.93 for project management and engineering, \$10,227.15 for superintendent, \$4,008.54 for monthly rentals of tools and equipment, \$859.55 for miscellaneous rentals and periodic expenses, \$62.39 for phone expenses, less the \$6,000 duplication deduction (totaling \$28,294), and \$1,507 for post-May 1998 wage escalation (3,349 hours at \$0.45/hour), to which Mona added 10% profit and .75% bond mark-ups. We find that Mona’s 1998 G&A rate was 10% ($\$1,908,260 \div \$19,108,143$). (Exs. A-217 at 155, A-288 at 1-2, A-298 at 3, A-308, -313; tr. 1241-44, 1339-64) Mona also estimated a \$894 cost for safety talks, but its mathematics were flawed – its witness stated that 30 minutes \div 40 hours = 2.5% and 3.349 hours \times .8% = 29.9 hours (tr. 1244-46). We find that safety talks were not time-related.

25. From February through April 1998, Mona incurred about 9,665 hours and averaged about 805 hours weekly on its WNY subcontract. On 16 April 1998 Mona had 1,628 hours of work to complete, at which time it was incurring about 875 hours weekly. We find that Mona completed essentially all its subcontract work by 29 April 1998, except for Modification A00178 floor layout change work. From 30 April to 14 August 1998, Mona’s supervisor and one or two electricians did punch list and floor layout change work, incurred about 2,270 hours and averaged about 189 hours weekly. (Exs. A-168 at 9-13, A-185 at 25, A-285, -286, -290 to -292, -295 to -297; tr. 1151-56, 1226, 1229-37) We find that from 30 April to 14 August 1998, Mona’s work substantially diminished, but it was not on “stand-by” of uncertain duration awaiting resumption of performance, and the record contains no evidence of whether Mona was able to take on substitute work.

26. On 7 November 2001, Smoot moved to exclude the testimony and written report (ex. G-55) of proposed Government expert witness, Dr. Paul Kauffmann, who had prepared a CPM schedule analysis (tr. 1517). Smoot asserted that Dr. Kauffmann was not qualified as an expert in construction CPM schedule analysis. Dr. Kauffmann's curriculum vitae sets forth his academic experience at Pennsylvania State University, Christian Brothers University, and Old Dominion University; his bachelor and master's degrees in mechanical engineering from Virginia Polytechnic Institute and State University, and his doctorate in industrial engineering from Pennsylvania State University; his industrial experience at Philip Morris USA; his recent consulting and research; his publications and papers and technical reports; and his professional licenses and societies (app. mot., ex. D). In his pre-hearing deposition, Dr. Kauffmann stated that he lacked education and experience in construction, his study and teaching of PERT/CPM analysis were in manufacturing and production, not construction, he had not prepared a construction schedule, he had not used the terms "excusable" and "compensable" delay in dealings with contractors, and he was not an expert in "concurrency" (ex. A-72 at 7-9, 14-18, 33-35, 38-39, 54, 91).

27. At the hearing, after receiving argument on Dr. Kauffmann's qualifications and reviewing his curriculum vitae, deposition transcript and proposed expert report, the presiding judge granted Smoot's motion to exclude from evidence the testimony and written report of Dr. Kauffmann in this appeal and ASBCA Nos. 52173, 53049 and 53246. The reason for so ruling was that Dr. Kauffmann's qualifications in construction CPM generation, adjustment and analysis were "quite thin" if not non-existent, and major portions of his written report relied upon schedule information in a compact disk received in evidence as appellant's ex. A-87, but which the Board could not access to verify the dates of such schedules. (Tr. 1873-74)

POSITIONS OF THE PARTIES

Appellant argues that (1) once the Navy issued the floor layout change, Smoot was entitled to use the remaining, extended, contract performance period for whatever original or changed work it chose, and (2) its subcontractor Mona Electrical is entitled to recover the site costs of project management and supervisory personnel, and extended home office overhead costs (*Eichleay* damages), during an alleged Government delay of 106 calendar days, apparently from 30 April to 14 August 1998, because Mona “was on standby for indefinite periods, and the uncertain nature of the availability of work made it impractical if not impossible to find replacement work” (app. br. at 72, 75; *cf.* at 69, referring to 29 April to 14 August 1998, which would be 107 days).

Respondent argues that (1) Smoot can recover no more than 10% for field overhead, 6% for overhead on subcontractor costs, 4% for home office overhead, and 6% for profit provided in contract 28 for change orders (finding 3); (2) Smoot did not prove that respondent was the sole cause of the 107-day delay (29 April to 14 August 1998) in completing contract 28; and (3) Hess Mechanical executed a release of Smoot and the owner, *i.e.*, the Government, from liability for all claims with respect to Hess’ WNY subcontract (finding 16).

DECISION

I.

On 7 November 2001, Smoot moved to exclude the testimony and written report of respondent’s proposed expert witness Dr. Paul Kauffmann, contending that he was not qualified as an expert in construction CPM schedule analysis (finding 26), and could not assist the trier of fact to understand the evidence or to determine a fact in issue, pursuant to Rule 702, Federal Rules of Evidence (FRE). Smoot cited several federal circuit and district court decisions for the rule that, in accordance with Rule 702, a trial court should exclude expert testimony when the witness’s expertise does not “fit” the facts of the instant litigation, in this appeal, construction CPM schedule analysis.

Due to receipt of Smoot’s motion just six days before the hearing of this appeal, respondent did not reply thereto, and the Board deferred ruling thereon, before the hearing. On the tenth and last day of the hearing, after receiving argument on Dr. Kauffmann’s qualifications and reviewing his curriculum vitae, deposition transcript and proposed expert report (ex. G-55), the presiding judge granted Smoot’s motion (finding 27).

Respondent argues that “[i]n a clearly erroneous ruling, the Board refused to allow Respondent’s expert, Prof. Kauffmann, to testify regarding the alleged impact on the CPM

schedule” (Gov’t br. at 93). Smoot’s briefs are silent on this issue. In accordance with Board practice, when a party challenges an evidentiary ruling in its post-hearing brief, the panel will review it. We do so here.

Dr. Kauffmann’s curriculum vitae sets forth his academic experience at Old Dominion University, Christian Brothers University, and Pennsylvania State University, his bachelor and master’s degrees in mechanical engineering and PhD in industrial engineering; his industrial experience at Philip Morris USA; his recent consulting and research; his publications and papers and technical reports; and his professional licenses and societies. Dr. Kauffmann indicated that he lacked education and experience in construction, and his study and teaching of PERT/CPM analysis were in manufacturing and production, not construction, he had not prepared a construction schedule, he had not used the terms “excusable” and “compensable” delay in dealings with contractors, and he was not an expert in “concurrency” (finding 26).

The panel concludes that Dr. Kauffmann is not qualified to testify as an expert in construction CPM schedule analysis and affirms the exclusion of his testimony and report on that basis. We do not reach the issue of failure to provide supporting schedule data in an accessible disk.

II.

Since the CO issued formal written change orders requiring Smoot to change the floor layout in WNY buildings 33, 39 and 109 and extending the contract completion date by 61 days, from 6 May to 6 July 1998 (findings 7, 11), and the changed floor layout activities predominantly became the critical path to completion (finding 8), the only remaining issue is the extent to which Smoot is entitled to an equitable adjustment therefor. Respondent’s argument that recovery is limited by the contractual provision relating to mark-ups lacks merit because contract modifications have exceeded 10% of the original contract price (findings 3, 20).

With respect to the prime contract, during the period 30 April to 14 August 1998, Smoot performed both original contract work and A00178 floor layout change work, and performed punch list items on both work categories after 6 July 1998 (finding 12). During the period 30 April to 14 August 1998 Smoot incurred \$49,924.39 in direct labor costs, \$14,166.47 in direct material costs, and \$23,978.68 for “Insurance, Taxes, and Fringe Benefits” at the rate of 48.03% of direct labor costs (finding 22) for a total of \$88,069.54. The record does not show what portion of the \$201,965 Smoot received by virtue of Modifications A00178 and A00197 was direct costs, and what portion was indirect costs (finding 14). We hold that Smoot has not established that the foregoing costs were not recovered previously in the foregoing \$201,965.

CTI Consultants, Mona Electrical, Hess Mechanical, C.J. Coakley, and Shalom Baranes, Smoot’s subcontractors on contract 28, in October 1998 claimed \$237,297 for the floor layout change order (finding 15(b)), and revised their claims to \$186,957 in January 1999 (finding 18(b)); Mona Electric reduced its claim at trial from \$144,668 to \$67,854 (findings 15, 21).

We have found no evidence to substantiate the allegations of CTI Consultants, Hess Mechanical, and C.J. Coakley, who submitted no books, records or other evidence to support the costs they alleged in their claims (finding 23). Allegations are not proof of disputed facts. *See James Reeves Contractor, Inc.*, ASBCA No. 33744, 88-1 BCA ¶ 20,426 at 103,317; *G.W. Hilton*, ASBCA No. 10263, 65-1 BCA ¶ 4766 at 22,631, and authorities cited therein. Moreover, on 8 November 1998, subcontractor Hess Mechanical executed a general release from liability for all claims under its subcontract in favor of Smoot and the Government (finding 17). Thus, Smoot is barred from pursuing Hess’ claim against the Government. *See Severin v. United States*, 99 Ct. Cl. 435 (1943); *cf.*, *Metric Constructors v. United States*, 314 F.3d 578, 583-84 (Fed. Cir. 2002) (subcontractor’s release was only “partial” and “to the extent of payments actually received” and was written to satisfy a local Florida statute). Shalom Baranes substantiated \$1,432.28 in direct costs incurred for PCO 251 work (finding 23), but Smoot has not established that such costs were not recovered previously in the foregoing \$201,965.

Mona Electrical submitted accounting records that supported the cost elements of \$19,135.93 for project management and engineering, \$10,227.15 for its superintendent, \$4,008.54 for tools and equipment, \$859.55 for miscellaneous expenses, \$1,507 for wage escalation, \$62.39 for phone expenses, less \$6,000, and a 10% G&A rate for 1998 (finding 24). During the 107 days from 29 April to 14 August 1998, Mona’s work substantially diminished, but it was not on “stand-by” of uncertain duration awaiting resumption of performance, nor does the record establish whether Mona was able to take on substitute work during such period (finding 25). Accordingly, Mona is not entitled to recover the \$30,480 *Eichleay* damages for extended home office overhead costs that it claims. *See Melka Marine, Inc. v. United States*, 187 F.3d 1370, 1375 (Fed. Cir. 1999), *cert. den.*, 529 U.S. 1053 (2000).

The Board calculates Mona’s time-related costs not included in Modification No. A00197 (finding 16), incurred on account of the floor layout change as follows:

Project management and engineering	\$19,135.93
Superintendent costs	10,227.15
Tools and equipment	4,008.54
Miscellaneous expenses	859.55
Phone expense	62.39
Wage escalation	<u>1,507.00</u>

Subtotal	35,800.56
Less: \$6,000 duplication	(6,000.00)
Subtotal	29,800.56
G&A at 10% of subtotal	<u>2,980.06</u>
Subtotal	32,780.62
Profit at 10%	<u>3,278.06</u>
Subtotal	36,058.68
Bond at .75%	<u>270.44</u>
Total amount	\$36,329.12

(Finding 24) To the foregoing \$36,329.12 we add Smoot's 6% profit and .48% bond rate (finding 22), for a total of \$38,693.71 ($\$36,329.12 \times 1.06 \times 1.0048$).

We hold that appellant is entitled to a \$38,693.71 equitable adjustment, plus CDA interest thereon from 28 January 1999 (finding 18), for the A00178 floor layout change under this appeal. We sustain the appeal to that extent, and deny the balance thereof.

Dated: 26 February 2003

DAVID W. JAMES, JR.
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. 52261, Appeal of The Sherman R. Smoot Corp., rendered in conformance with the Board's Charter.

Dated:

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