

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Maggie's Landscaping, Inc.) ASBCA No. 56748
)
Under Contract No. DAAD05-92-D-7022)

APPEARANCES FOR THE APPELLANT: Gilbert J. Ginsburg, Esq.
Washington, DC

Philip C. Jones, Esq.
Greenburg, Spence & Taylor, L.L.P.
Rockville, MD

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.
Army Chief Trial Attorney
LTC Dana J. Chase, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE JAMES
ON APPELLANT'S MOTION FOR RECONSIDERATION

On 22 July 2011, the Board issued its decision on quantum in the captioned appeal, allowing \$24,268.85 including 10% profit, plus CDA interest, on Maggie's three claims, and allowing \$21,164.06 on the government's claim. *Maggie's Landscaping, Inc.*, ASBCA No. 56748, 11-2 BCA ¶ 34,807 at 171,292. Familiarity with our decision is presumed. Appellant timely moved for reconsideration on the sole issue of our \$11,472.74 (exclusive of profit) allowance on the mowing height change. On 31 August 2011 respondent opposed the motion, contending that appellant has shown no error of fact or of law and raised no argument not previously considered by the Board.

In our 22 July 2011 decision, we determined that before the 17 June 1994 mowing height change, it took 30.66 hours per week to mow the relevant areas with the "Jake" mower. After the mowing height change, it took 33.42 hours per week to mow those areas, an increase of 2.76 hours per week. Prior to the change, only one operator was required. After the change, two operators and two laborers were required. For purposes of quantum, we calculated the cost of the two operators and two laborers for the 2.76 hours and arrived at a total of \$11,472.74.

Appellant points out that we should have compared the cost for the entire number of hours per week after the change (33.42 hours) for two operators and two laborers, with the cost for the entire number of hours per week before the change (30.66 hours) for one

operator. Appellant used the figures in finding 12 of our decision to arrive at an increased cost of \$98,909.50 in lieu of \$11,472.74.

We are persuaded that appellant is correct, except that it made an addition error in its calculation. The corrected calculation is:

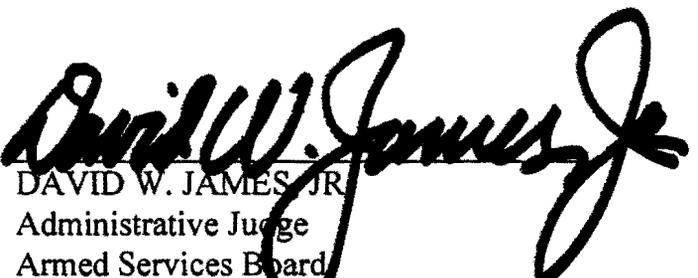
Two tractor operators at an average rate of \$31.02/hr. x 33.42 hrs. =	\$1,036.69
Two trimmer/laborers at an average rate of \$27.28/hr. x 33.42 hrs. =	911.70
Less: one "Jake" operator at an average rate of \$15.51/hr. x 30.66 hrs. =	<u>(475.54)</u>
Net impact of increased maintenance/week =	\$1,472.85
Times 71.3 weeks =	<u>\$105,014.21</u>

Accordingly, we grant appellant's motion for reconsideration, and modify the first sentence in the paragraph following our CONCLUSION (11-2 BCA ¶ 34,807 at 171,292) as follows:

We have allowed \$115,604.06 (\$105,014.21 for changed mowing height + \$3,640.00 for 438 new trees + \$6,949.85 for 3,341 l.f. of fencing). We add 10% profit (\$11,560.41) thereto, for a total of \$127,164.47 (\$115,604.06 + \$11,560.41) plus CDA interest from 25 March 1997 (finding 1) until paid.

In addition, we modify finding 12 and the first paragraph of the Decision (11-2 BCA ¶ 34,807 at 171,290, 171,292) to conform to the analysis in this opinion.

Dated: 30 September 2011


DAVID W. JAMES JR.
Administrative Judge
Armed Services Board
of Contract Appeals

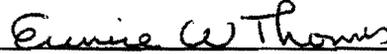
(Signatures continued)

I concur



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

I concur



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. 56748, Appeal of Maggie's Landscaping, Inc., rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals