

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
Unisys Corporation) ASBCA Nos. 49083 49100 49214
) 49905 49912 49913
Under Contract No. F01620-91-D-0003)

APPEARANCES FOR THE APPELLANT: Thomas J. Touhey, Esq.
Kilcullen, Wilson and Kilcullen, Chartered
Washington, DC

Lawrence C. Melton, Esq.
Bastianelli, Brown & Kelley
Washington, DC

Anne H. Warner, Esq.
Assistant General Counsel
Unisys Corporation
McLean, VA

APPEARANCES FOR THE GOVERNMENT: COL John M. Abbott, USAF
Chief Trial Attorney
Diana S. Dickinson, Esq.
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE TODD

These appeals involve claims for payment for maintenance coverage of Air Force mainframe computers, accessories, peripherals, and software under the terms of an indefinite delivery, indefinite quantity contract. Some of the Air Force agencies that issued delivery orders under the contract have not paid for equipment maintenance and software support that appellant argues was required. According to appellant, they failed to issue contractually required affirmative discontinuance notices for the equipment and software in issue, and therefore, are required to pay for the contract performance provided. The Government argues that the contractor is not entitled to be paid for maintenance services that were never ordered and have not been shown to have actually been furnished. Both entitlement and quantum are before us for decision.

GENERAL FINDINGS OF FACT

The Contract

1. On 24 June 1991, Contract No. F01620-91-D-0003 was awarded to Unisys Government Systems, Inc. “in support of sustaining and maintaining the Standard Base Level Computer (SBLC) environment” (ex. A-206 at 4). Appellant Unisys Corporation (Unisys) is the successor in interest to Unisys Government Systems, Inc. The contract was an indefinite quantity, indefinite delivery type of contract. The term of the contract, which was renewable, was from 1 July 1991 through 30 September 1992. The estimated contract amount was \$612,000,000. Funds were obligated on individual delivery orders that were authorized to be issued by the contracting offices for 38 Air Force agencies world-wide. The contract requirements included data, technical support, training, hardware and software maintenance and upgrades, installation, logistics support and special studies, analyses and tests. (Ex. A-206)

2. The contract referred to the previous Phase IV contract in Clause B-4, which provided:

Contract F19630-81-D-0002, Phase IV, was the preceding contract to this contract. Contractual agreements written under contract F19630-81-D-0002 which expressly extend beyond the term of that contract may be carried over into this contract by issuance of new contractual instruments. All such agreements carried over must be mutually agreed to, in writing, by the Contractor and SSC/PKCD [Standard Systems Center procuring contracting officer] prior to issuance of a delivery order.

(Ex. A-206 at 4) In 1983 Sperry Corporation, predecessor to and the same as Unisys, was awarded the Phase IV contract for an eight-year base period and two six-year options. At the end of the base period, the Government did not exercise the first option. The Government entered into sole source negotiations for the subject contract, known as the Phase IV follow-on contract. (Ex. A-117)

3. The contract line items (CLINs) in issue in these appeals are subCLINs 0006AA (Equipment Maintenance, Basic System Support) and 0007AA (Equipment Maintenance, Small Systems Support). The contract provided for subCLINs 0006AA and 0007AA in Table B-4 with unit pricing by model number by the month. The contract provided for minimum and maximum quantities. Clause B-2 mandated ordering in the first fiscal year “at least the following minimum” subCLINs: 0002AA, 0006AA, 0007AA, and 0008AA. Table B-4 listed the basic equipment items for mandatory

ordering and unit prices. Equipment maintenance service was to include parts and labor to keep the equipment in good operating condition and to deliver a systems effectiveness level of 99 percent for large systems and 95 percent for small systems. Maintenance coverage was to be 24 hours per day, 7 days per week. The contract provided for payment within 30 days of receipt by the payment office designated on the delivery order of a proper invoice citing all pertinent data, including the description and quantity of services furnished. There was also a subCLIN for equipment lease. (Ex. A-206 at 4, 6-7, 29-142, 210, 244) The parties understood that services were provided under an “insurance maintenance concept,” meaning that appellant was prepared and stood ready to perform services on an on-call basis for which it was paid monthly maintenance charges per line item of equipment whether or not the equipment required maintenance (tr. 1/113, 201, 3/7, 44, 4/167).

4. SubCLIN 0009AE is in issue in ASBCA No. 49912 (Gunter Software). Table B-5-B4 in the contract included the following description of the monthly charge for maintenance support services for software:

The Software Support Plan (SSP) provides for on-going software correction service and/or assistance in problem identification and resolution of contractor-provided software. . . . The monthly SSP charge covers the maintenance of the software product as well as software updates.

(Ex. A-206 at 202)

5. Clause F-8, “Delivery Order Status,” provided in pertinent part:

All orders issued against this contract shall be processed through the Information Processing Management System (IPMS) Ordering Module; and, the database of delivery orders shall be maintained by the Government within the IPMS ordering module. The Contractor shall provide specific information concerning the status of each IPMS order number by directly updating the appropriate fields in the IPMS ordering module records.

(*Id.* at 252) This was the first contract that required the Air Force to implement the Information Processing Management System (IPMS) to maintain the inventory of its computer systems (ex. G-77; tr. 3/136-37, 204).

6. Clause G-1 of the contract provided for contract administration. Paragraph G-1.a. provided the address of the Procuring Contracting Officer (PCO) as Standard Systems Center (SSC) at Gunter Air Force Base (AFB), Alabama. Mr. Alan D. Bullock, a senior contracting officer at SSC, was the PCO on the contract until his death in April 1993. He performed his duties as PCO until March 1993. (Ex. A-206 at 255; tr. 1/179, 4/85) After an interim period, Mr. William A. Cox, a contract specialist supervisor at SSC, replaced Mr. Bullock as the PCO in October 1993 (tr. 4/128-29). Paragraph G-1.d. required that orders be prepared and issued for delivery of supplies and services under the contract and specified the information, including the IPMS number, to be included in an order (ex. A-206 at 255).

7. Clause G-3 of the contract provided for administrative authority. The contract designated the Air Force activities that could issue delivery orders for the contract services. The PCO delegated administrative authority to the Air Force agencies listed in the contract, referred to as the Major Commands (MAJCOM) and Separate Ordering Authorities (SOA), to direct issuance of the delivery orders.¹ Quality assurance evaluators at the MAJCOM/SOAs were authorized to issue equipment orders,² issue discontinuance notices, and perform liaison with the contractor required by these actions. The PCO retained authority for other administrative actions, including but not limited to, contractual problems such as disputes, price negotiations, and changes. Paragraph G-3.c. restricted the authority of the MAJCOM/SOA contracting officers to issuance of delivery orders on DD Form 1155 unless otherwise authorized in writing by the PCO. (Ex. A-206 at 256-60) Paragraph G-3.g.(6) specifically provided:

The SSC Procuring Contracting Officer retains sole authority for explanation of contract terms and interpretation of contract conditions, modification of those terms and conditions and any other authority as authorized by law, statute, or regulation. Any dispute between the Air Force and the Contractor must immediately be forwarded to the SSC Procuring Contracting Officer.

(Ex. A-206 at 258) Mr. Bullock did not have authority by virtue of his contracting officer's warrant to obligate MAJCOM funds (tr. 4/65).

8. The contract provision for discontinuance notices that is in dispute in these appeals is Clause H-10, "DISCONTINUANCE (APPLICABLE TO MAINTENANCE/SERVICES ONLY)," which provided in pertinent part:

The Government may discontinue maintenance and/or services after thirty (30) days written notice to the Contractor.

Written notice shall include the equipment model number, serial number and effective date of equipment being discontinued. Omission of items from a current fiscal delivery order does not constitute advance written notice. The Government shall provide the Contractor a thirty (30) day advance written notice prior to the end of the fiscal year to discontinue lease, use, maintenance or services which would be effective the first day of the succeeding fiscal year.

(Ex. A-206 at 267) Both appellant and the PCO interpreted this provision to mean that leaving an item off a delivery order for a current fiscal year is not a notice of discontinuance (tr. 1/164, 2/27, 216-17, 4/173). The purpose of Clause H-10 was to ensure that equipment in the field was covered by maintenance, even if a subsequent delivery order inadvertently omitted certain items (ex. A-176).

9. The contract incorporated by reference the standard clause FAR 52.216-18 ORDERING (APR 1984), which provides in pertinent part as follows:

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders by the individuals or activities designated in the Schedule.

The contract also incorporated the standard clause FAR 52.216-22 INDEFINITE QUANTITY (APR 1984), which provides in pertinent part as follows:

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

Other standard clauses incorporated in the contract were FAR 52.216-19 DELIVERY ORDER LIMITATIONS (APR 1984), and FAR 52.233-1 DISPUTES (APR 1984) ALTERNATE I. (Ex. A-206 at 297-99)

Contract Performance

The June 1991 Workshop

10. On 24 June 1991, Mr. Bullock announced approval of the Phase IV follow-on contract in a message sent to all MAJCOM. The message included the following directive:

To ensure continuity of services, and to meet regulatory requirements to have contractual instruments in place to authorize the contractor to begin service 01 July 1991, you should execute and issue DD Forms 1155, effective 01 July 1991, to Unisys Government Systems, Inc. as quickly as possible. *These orders should be written against the new contract, F01620-91-D-0003, in the amounts of your current monthly expenditures for maintenance and any programmer/analyst support.* Upon receipt of the new contract, due shortly after 01 July 1991, you should verify CLIN numbers and prices for correction of the issued delivery order.

(R4, tab 4A at ex. A; emphasis added)

11. On 24-26 June 1991, the PCO convened a workshop at Gunter AFB for representatives of all MAJCOMs and SOAs affected by the contract. Unisys representatives attended the workshop. At the workshop Mr. Bullock briefed the MAJCOM/SOAs on the changes in the new contract and addressed the transition from the previous Phase IV contract, which was then in effect but would expire on 30 June 1991. The Air Force wanted a smooth transition and did not intend for Unisys to stop its maintenance coverage. (Tr. 3/153, 172) The text of Mr. Bullock's prepared speech included the following discussion of contract administration as set forth in Clause G in the contract:

INCLUDED IN THIS SECTION . . . [ARE] THE REQUIREMENTS FOR ORDERING DOCUMENTS, DD FORMS 1155, AND 782S, AND ORDER CORRECTIONS/MODIFICATIONS, STANDARD FORMS 30.

OF PRIMARY INTEREST TO YOU TODAY IS HOW YOU WILL EFFECT PLACEMENT OF ORDERS FOR THE NEW CONTRACT, THOUGHT TO START 01 JULY 1991. TO FACILITATE THIS ORDERING, AND TO ENSURE UNISYS HAS AN ORDER AGAINST WHICH TO PERFORM, THE TWO SINGLE MOST IMPORTANT ITEMS SHOULD IMMEDIATELY BE ORDERED - MAINTENANCE OF EQUIPMENT (CLIN 0006) AND CONTINUATION OF ANY PROGRAMMER/ANALYST SUPPORT SERVICES (CLIN 0002).

[ORDER] EXACT AMOUNTS, BASED ON NEW CONTRACT PRICES AND ATTACHED EQUIPMENT LISTS - OR, [ISSUE] DELIVERY ORDERS WITH CURRENT CLIN AMOUNTS UNTIL THE ORDER CAN BE CORRECTED BY MODIFICATION.

(Ex. A-4 at 5; emphasis in original) The MAJCOM/SOA representatives were to issue their orders as quickly as possible, and they were to carry over pre-existing levels of maintenance coverage if they could not issue complete delivery orders with the required equipment lists. (Tr. 1/208, 2/7, 3/25-26, 112, 4/102-04, 184) Mr. Raymond M. Gans, chief of the Life Cycle Management Branch responsible for management of the SBLC, confirmed that the MAJCOM/SOAs were told by Mr. Bullock to issue a letter of intent or something, not necessarily a delivery order, to cover maintenance of the hardware that was installed (tr. 3/132).

12. Ms. Beverly Hayes, appellant's director of contracting, negotiated the contract for appellant and was present at the workshop (tr. 1/172, 190, 207). A memorandum written by Mr. Bullock, dated 20 June 1991, before the workshop, confirms her understanding of the minimum ordering requirement in the contract. The memorandum states in pertinent part:

THE PHASE IV FOLLOW-ON CONTRACT, IN ESSENCE A CONTINUATION OF THE PREVIOUS CONTRACT, CONTAINS NO SPECIFIC MINIMUM QUANTITIES AS USUALLY REQUIRED FOR THIS TYPE CONTRACT. THE MINIMUMS OF THE PHASE IV CONTRACT ARE EXPRESSED IN TERMS OF CONTRACT LINE ITEMS WHICH CONSIST OF SERVICES, WHICH ARE CURRENTLY BEING PROVIDED UNDER THE CURRENT CONTRACT. . . .

. . . .

KNOWN MINIMUMS REQUIRED TO MAINTAIN AND SUSTAIN THE STANDARD BASE LEVEL COMPUTER (SBLC) SYSTEM, AS CURRENTLY INSTALLED, TO BE ORDERED BY MAJCOM/SOA

PERSONNEL, ARE THOSE TO BE REALIZED BY THE CONTRACTOR AND WILL BE ORDERED BY THE END OF THIS FISCAL YEAR. BEYOND THESE (MINIMUMS), THERE ARE NO OTHER ORDERING REQUIREMENTS TO BE FULFILLED BY THE GOVERNMENT.

(Ex. G-15; tr. 1/216, 220, 225) The daily minutes of the contract negotiations of prices and terms of the contract do not address the transition to the Phase IV follow-on delivery orders (ex. G-10; tr. 1/133, 204-09, 2/6-7, 3/119, 130, 4/102). We find that Unisys was requested to start maintenance under the new contract on 1 July 1991 at the same level of maintenance coverage as at the end of the previous contract. Mr. Bullock did not tell Unisys that it should provide maintenance coverage without delivery orders (tr. 3/168, 186-87, 226, 240, 4/103).

13. Mr. Bullock did not interpret either contract to require discontinuance notices at the end of the Phase IV contract. His speech included the following:

WITH THE EXPIRATION OF THE CURRENT CONTRACT, SO GOES CERTAIN REQUIREMENTS WHICH ARE THEN RE-INSTALLED WITH ISSUANCE OF AN ORDER UNDER THE NEW CONTRACT. THESE ARE THE 30-DAY WRITTEN ADVANCE NOTICES REGARDING DISCONTINUANCE OF MAINTENANCE.

(Ex. A-4 at 7; tr. 3/211-12, 227, 242, 4/104)

14. As of 24 June 1991 many MAJCOMs and SOAs could not use the IPMS required by the contract (finding 5, *supra*). IPMS was a Government system that began in 1987 for computer inventory reporting and accountability and for centralized ordering of automated data processing equipment, software and maintenance from standard Air Force contracts. (Ex. G-77; tr. 3/136-37) A description, serial number, and site location had to be assigned to every item of equipment before issuance of a delivery order, unless a waiver was requested and granted by SSC. The Government was responsible for the computer inventory, but did not have accurate records of its equipment. The Government relied on a base level Management Support System (MSS), also known as the TAC Command Resource Automated Maintenance System (CRAMS), during the Phase IV contract. Unisys maintained an Asset Inventory Management (AIM) database of the inventory that it used for billing purposes. (Ex. A-142; tr. 2/82, 4/72, 85) At the time of the workshop, both appellant and the Government anticipated that there would be problems using IPMS to list the equipment in the delivery orders because of the inaccurate records and the fact that IPMS was not fully implemented. Mr. Bullock was concerned that the status of inventory control and the need for training to use the new system would prevent issuance of delivery orders. He wanted to ensure that appellant

would have an order against which to perform. For these reasons he determined that the MAJCOM/SOAs could use the current Phase IV contract line item amounts in the new delivery orders until they could issue delivery order modifications to make corrections to exact amounts based on the new contract prices, add or delete items of equipment for coverage, and attach IPMS generated equipment lists. (Ex. A-4 at 6, exs. A-57, -97, -136, G-13; tr. 1/205-09, 2/45-46, 3/145, 187, 245, 3/131-33, 4/21)

15. Ms. Hayes, who was authorized to negotiate the contract for appellant, made a commitment to the PCO at the workshop to provide the same level of maintenance coverage as it provided on 30 June 1991 under the Phase IV contract without regard to the timeliness of the issuance of the delivery orders. Appellant relied on the need of the Air Force for uninterrupted maintenance coverage and the PCO's instructions to the MAJCOMs and SOAs to issue their delivery orders as soon as possible. (Tr. 1/134, 150, 154, 3/119) Ms. Hayes, like Mr. Bullock, interpreted the contract requirement to order the minimum quantity of the subCLINs in issue as orders of coverage of the equipment in the SBLC environment (tr. 1/228; *see* finding 12, *supra*).

Issuance of Delivery Orders

16. On 1 July 1991, appellant continued to provide its pre-existing level of maintenance coverage (exs. A-13, -19, G-28; tr. 3/159). As of 9 August 1991, appellant had received approximately 30 percent of the delivery orders from the MAJCOM/SOAs. Without a delivery order appellant was unable to invoice for all its services for the month of July. Mr. Bullock sent a message to the MAJCOM/SOAs requiring immediate action to issue outstanding delivery orders, which he stated must be completed by 16 August 1991. He required prompt payment be made upon receipt of invoices for the months of July and August. (Exs. A-15, G-24; tr. 2/191-92)

17. On 10 September 1991, Mr. Bullock sent a follow-up message to the MAJCOM/SOAs that stated appellant had received approximately 68 percent of the delivery orders from the MAJCOM/SOAs and had continued to provide maintenance coverage without payment. Mr. Bullock required immediate action to issue delivery orders. This message included the following about the possibility that the arrangement for continued maintenance coverage under the contract would be ratified:

IF UNISYS HAS NOT RECEIVED REQUIRED PAYMENTS BY
30 SEP 91, THEY MAY PURSUE RATIFICATION ACTIONS. IN
ADDITION, WE ARE INSTRUCTING UNISYS TO DISCONTINUE
MAINTENANCE AND SERVICES ON 1 OCT 91 AT ANY LOCATION
FOR WHICH THEY HAVE NOT RECEIVED PAYMENT IN FULL FOR
SERVICES PROVIDED.

(Ex. G-28) The PCO did not take any action after the fact that formally ratified any of the understandings of the parties at the June 1991 workshop (tr. 4/137-38). Mr. Bullock's message quoted above was not sent to Unisys, and appellant was never directed by the PCO to discontinue maintenance and services as of 1 October 1991 (tr. 2/53).

18. On or about 6 December 1991, Mr. Bullock stated again in a message to the MAJCOM/SOAs that appellant had grounds for ratification if it had not received delivery orders for the period 1 July 1991 through 30 September 1991 (ex. A-150; tr. 3/164-65). Mr. Bullock required immediate action to correct delivery orders to allow payment to be made to appellant. This message included the following about the continuation of maintenance coverage:

ALL DELIVERY ORDERS MUST BE CORRECTED BY MAKE,
MODEL, SERIAL NUMBER, AND TYPE OF MAINTENANCE
COVERAGE (SHOULD BE A CARRYOVER OF THE SAME
MAINTENANCE COVERAGE ORDERED UNDER THE OLD PHASE
IV CONTRACT). . . . ALL DELIVERY ORDERS MUST BE
CORRECTED AND SUBMITTED TO UNISYS NOT LATER THAN
22 JAN 91.

(Ex. A-150 at 2; emphasis added.)

19. There is no dispute regarding appellant's satisfactory performance of the contract work. There was never a lapse of maintenance coverage after expiration of the Phase IV contract. (Tr. 3/119-20, 248-50, 4/30)

Joint Inventory Reconciliation Audit

20. Problems with the administration and billing of the contract arose due to serial number discrepancies among the three data bases of equipment: IPMS, MSS/CRAMS, and AIM. The new IPMS generated equipment lists did not match the Government and Unisys equipment lists in use at the end of the previous Phase IV contract. Appellant relied on its AIM database for billing, but would not be paid for, and did not bill for, any item of equipment that was not included on an IPMS list for a delivery order although it continued to provide maintenance coverage for it. Appellant developed a procedure to hold items that were not on the IPMS lists in "suspense" status for later resolution of the discrepancies. (R4, tab 2A; ex. A-142; tr. 2/81, 4/185)

21. On 7 November 1991, SSC sent a memorandum to the MAJCOM/SOAs requesting assistance in a reconciliation program to resolve the equipment discrepancies. Appellant agreed to participate with the Government in a joint inventory reconciliation

audit to ensure that serial numbers matched in all three data bases and thus accurately identified the equipment for which maintenance was ordered. (Ex. A-142; tr. 2/82-83)

22. On 4 February 1992, Unisys participated in a kick-off meeting that established the objectives and procedures for the joint inventory reconciliation audit. Unisys and the PCO agreed to a classification of the types of inventory discrepancies that were anticipated and how they would be handled. (Ex. A-143; tr. 2/81-88, 143-44)

23. On 28 February 1992, Mr. Bullock's office provided information on the audit to the MAJCOM/SOAs. The first major objective was stated as follows:

Modify maintenance delivery orders (D.O.) coverage as required to insure all equipment covered in the Phase IV contract is carried forward or deleted as required.

(R4, tab 3G, ex. B at 3) The PCO required delivery order modifications as follows:

All items previously maintained under the original Phase IV contract were automatically maintained by Unisys pending receipt of late D.O.s by Air Force. Coverage is required effective 1 July 1991, FY91(4) through FY92. A formal 30 day advance cancellation notice, in accordance with the Contract, is required to discontinue any lease and/or maintenance charges.

(*Id.* at 6) On 17 March 1992, operating instructions were posted on the Air Force IPMS electronic bulletin board for information of the MAJCOM/SOAs (R4, tab 3G at ex. D; tr. 2/98-99).

24. Items that were not physically found during the inventory and were not on the IPMS lists, but which were in the Unisys AIM database for billing purposes at the end of the Phase IV contract were termed "Condition 8" (ex. J-1; tr. 3/236). "Condition 8" equipment was contemporaneously defined in an attachment to an unidentified document as follows:

THE ITEMS WERE NOT FOUND DURING THE RECONCILIATION AUDIT. THEY ARE NOT IN IPMS OR ON THE DELIVERY ORDER/AF782 BUT ARE BILLING IN AIM IN JUNE. NEW DELIVERY ORDER COVERAGE IS NEEDED FOR THESE ITEMS FROM JULY 1, 1991 TO THE DATE OF THE SIGNED AUDIT. CANCELLATION NOTICE IS NEEDED EFFECTIVE THE DATE OF THE SIGNED AUDIT.

(R4, tab 3A, ex. I at 4; emphasis in original) Unisys understood that delivery orders would be corrected by modification and payment would be made to cover the period from 1 July 1991 to the date of the signed, completed audit. Unisys accepted completion of the audit as the agreed effective date of discontinuance for the Condition 8 items under Clause H-10, the discontinuance provision in the contract. (R4, tab 3G at ex. G; exs. A-22, -24; tr. 2/83, 100-01, 109, 111) The parties have stipulated their agreement to what a “Condition 8” was as follows:

[I]tems that were not found in the Government’s inventory at the time of the audit reconciliation and were not in IPMS or on the Delivery Orders (782’s) but which were billing in the Unisys AIM data base at the end of the Phase IV Contract were termed “Condition 8”.

(Ex. J-1; tr. 2/110, 4/188-89) The Government did not provide for appellant’s participation in the joint inventory by change order to the contract. There is no written modification to the contract that provides that Condition 8 equipment would receive delivery order coverage.

25. By the end of May 1992, after the audits were completed, appellant had sent a discrepancy report to each of the sites. The Government was to initiate the agreed modification action. (Exs. A-22, -186, G-137; tr. 2/112, 3/200-02) The MAJCOM/SOAs issued modifications to their delivery orders to delete equipment that had been included in IPMS lists in error and to provide coverage for Condition 8 equipment. Only two MAJCOMs that are the subject of ASBCA Nos. 49100 and 49214 refused to comply with the instructions for the audit (tr. 2/110-11, 4/162).

Payment Issues

26. On 9 September 1992, Mr. Bullock sent a memorandum to the MAJCOM/SOAs to clarify misunderstandings regarding the initiation of the Phase IV follow-on contract. This memorandum included the contracting officer’s interpretation that any changes to the 30 June 1991 equipment list, which were mandated minimum requirements to be duplicated effective 1 July 1991 in delivery orders issued under the new contract, were required to be made under the terms and conditions of the new contract. The new contract provided for 30-day notification of discontinuance of maintenance in writing (finding 8, *supra*). Mr. Bullock referred to an agreement between the PCO and Unisys that the maintenance coverage in effect 30 June 1991 would be immediately ordered by the MAJCOM/SOA to ensure continuation of maintenance (R4, tab 2A, ex. D; tr. 2/54-57).

27. SSC with legal advice reviewed the status of the issues involving payment to appellant for maintenance coverage in a memorandum, dated 2 October 1992, from Colonel Robert E. Hergenroeder, director of contracting for SSC at Gunter AFB (R4, tab 2A at ex. E; tr. 4/59, 61-63). The memorandum stated that delivery orders had been issued incorrectly due to misunderstandings from the June 1991 workshop and clarified the PCO's directive as follows:

At this meeting the Contracting Officer directed Unisys to continue maintenance at every site at the level and equipment listing of the current delivery order in place 30 June 1991; additionally, the Contracting Officer advised each ordering officer to execute a delivery order to this effect so there would be no lapse of maintenance during the transition period.

(R4, tab 2A at ex. E p. 2) The memorandum included the Government's interpretation that "the contract provisions explicitly require the government to take an affirmative step (30-day written notice) to terminate maintenance coverage by Unisys" (R4, tab 2A at ex. E p. 3). Ms. Hayes received a copy of this memorandum from Mr. Bullock in 1992 and found it consistent with what appellant had agreed at the time of contract award (tr. 2/57-60).

28. Appellant does not have records of service calls for Condition 8 equipment since none were made. The Government usually prepared a Form 597 for each item of equipment for which appellant performed maintenance, but Condition 8 equipment did not exist and no actual maintenance services were provided. (Tr. 3/121-23, 198, 252)

29. Unisys advised the contracting officer in a letter, dated 8 September 1994, that it is not seeking an equitable adjustment for a contract change, but claims payment in accordance with the contract's terms and conditions, including pricing. Appellant specifically stated, "there is no issue as to incurred costs." (R4, tab 2C)

30. On 2 March 1995, Colonel Hergenroeder and the Staff Judge Advocate prepared a position paper for guidance to the new PCO for resolving the first three claims appellant submitted that are the subject of these appeals. The paper included review of the pertinent Phase IV follow-on contract provisions and the written record left by Mr. Bullock, the deceased PCO. According to the paper, the PCO knew that only a MAJCOM could order maintenance for its MAJCOM and wanted to establish a relationship between Unisys and the MAJCOM that would ensure a prompt order for Unisys effective 1 July 1991, with equipment covered that (1) was in service at the site, (2) for which the MAJCOM had funding, and (3) which the MAJCOM elected to cover. A claim for providing maintenance of this equipment for the first fiscal year was

considered valid. The requirement for 30-day advance discontinuance notice would apply to this baseline of equipment. (Ex. G-113; tr. 4/76-79)

ASBCA No. 49083 - USAFE

ADDITIONAL FINDINGS OF FACT

31. On 22 August 1991, the United States Air Force European Command (USAFE) issued Delivery Order No. UH01 to appellant for equipment maintenance coverage for the period 1 July 1991 through 30 September 1991. The order provided confirmation of verbal notice from the USAFE ordering contracting officer to Ms. Hayes that USAFE intended to put all of the pre-existing level of maintenance in place on 1 July 1991. (R4, tab 2D; tr. 2/61-62, 120, 4/7) Paragraph E of the delivery order stated:

Unless a modification is issued service for the period 1 Jul 91 through 30 Sep 91 shall continue as establish [sic] under the previous contract F19630-81-D-0002.

(R4, tab 2D at 2) On 28 August 1991, AF Forms 782 with IPMS were issued. The IPMS lists did not match the equipment lists the parties were using at the end of the previous contract (the Phase IV lists). Appellant continued maintenance coverage on all equipment that was covered on 30 June 1991, the end of the Phase IV contract, but could not bill the Government at the pre-existing level of coverage to the extent items were omitted from the delivery orders. (R4, tabs 2A, 2D, 2S; ex. A-188; tr. 2/121, 127, 4/30-32)

32. On 1 October 1991, USAFE issued Delivery Order No. UH04 for equipment maintenance coverage from 1 October 1991 through 31 December 1991. In January 1992, USAFE provided AF Forms 782, with the IPMS lists for the same period of time. There were discrepancies between the IPMS lists and the Phase IV lists. Unisys continued maintenance coverage at the pre-existing level of coverage. (R4, tab 2D; tr. 2/126)

33. On 18 December 1991, USAFE issued Delivery Order No. UH08, which extended the effective period of Delivery Order No. UH01 through 30 September 1992, and provided new IPMS lists (R4 tab 2A; ex. A-189).

34. In August 1992, appellant and USAFE participated in an independent joint inventory audit to reconcile the differences between the IPMS lists and the Phase IV lists. It was necessary to locate and confirm the existence of equipment in the AIM database to add to the IPMS list and identify equipment that might exist, but had not been placed on the IPMS list. (Tr. 2/122-23) USAFE did not issue separate discontinuance notices to

stop maintenance coverage for any equipment. On 6 October 1992, USAFE issued corrected Forms 782 retroactive to 1 July 1991, in modifications to Delivery Order No. UH01, with non-IPMS equipment lists that show some items "DISCONTINUED" as of 30 September 1991 (ex. A-188 at 578; tr. 2/131, 4/11). The Government has paid for maintenance coverage for these items for the period 1 July 1991 through 30 September 1991, which is not in dispute in the subject appeal. USAFE has not paid for maintenance coverage for these items for the period 1 October 1991 through 31 August 1992, the effective date of a discontinuance notice based on the audit (tr. 2/125-26, 4/49).

35. At a meeting on 22 October 1992, USAFE IPMS personnel and appellant discussed the amount of a modification to Delivery Order No. UH04 to cover maintenance charges for the omitted items during the period beginning 1 October 1991 based on the results of the audit. USAFE also discussed the matter with SSC. USAFE in a letter, dated 30 October 1992, sent appellant cost details and identified the remaining dispute as the date to use for discontinuance. Appellant responded by letter, dated 2 November 1992, with its costs of the delivery order modification for the two discontinuance dates under negotiation: 31 May 1992 or 31 August 1992. (Exs. A-45, -46) An agreement was reached between USAFE IPMS personnel and appellant on the date of 31 August 1992, which was the date of the completion of the audit, for the discontinuance of coverage for equipment that could not be verified and placed on the IPMS list for continuing coverage on 1 October 1991. (Ex. A-51; tr. 2/134) Mr. Melvin W. Carr, Jr., the Deputy Director of Contracting at SSC, who was Mr. Bullock's immediate superior, in a memorandum, dated 16 November 1992, to USAFE calculated the amount due appellant based on the discontinuance date of 31 August 1992. Mr. Carr concluded that payment was due based on the parties' agreement to the discontinuance date and the lack of documentation to prove discontinuance notices were properly given to initiate specified discontinuations of maintenance coverage. (Ex. A-51; tr. 4/147-48) SSC considered the matter resolved (exs. A-52, -53).

36. In mid-1992, Ms. Molly Harris became the contracting officer at USAFE. She disagreed with SSC and Unisys that appellant should be paid for maintenance coverage during the period 1 October 1991 through 31 August 1992 for equipment that had not been discontinued by discontinuance notices. She presented her position to appellant in a meeting on 24 February 1993. She disputed Mr. Bullock's interpretation of the contract that the agency had a duty to pay for maintenance coverage ordered until properly discontinued pursuant to Clause H-10. She found no record of an order for maintenance identical to that in the previous contract. It was her position in discussions with Ms. Hayes of Unisys that discontinuance notices were not required because the previous contract had expired. SMSgt. Christopher J. Andrews, the USAFE IPMS coordinator and equipment ordering officer, who was the only witness to testify at the hearing for USAFE, did not accept Mr. Bullock's position because he did not have authority to commit USAFE funds for modifications to appellant's delivery orders. (Exs. A-55, -56 at 5; exs.

A-88, G-72, -73, -82, -86; tr. 2/69, 4/8-13, 46) Ms. Harris' dispute continued with Mr. Bullock until he became ill in March 1993, with Mr. Cox, the successor PCO, and with Ms. Hayes (exs. A-58, -59, -61, -66, -70, -89, G-82, -83; tr. 2/70-76).

37. On 28 May 1993, Colonel Hergenroeder, director of contracting at SSC, arranged a meeting with representatives of appellant, SSC, and USAFE to resolve the issue without resort to litigation. In a letter to appellant, he stated that the issue centered on:

. . . (1) what equipment was actually present for maintenance at the start of the follow-on SBLC contract, and (2) what benefits did the government receive and liabilities did Unisys incur with Unisys assuming responsibility for maintenance until USAFE issued its first delivery order against the follow-on contract.

(R4, tab 2C, ex. B at 2; tr. 4/70) On 11 June 1993, Mr. Raymond McCain, a contract specialist at Gunter AFB, who attended the meeting, verified the accuracy of minutes taken by Captain Sam Masdon, the interim PCO after Mr. Bullock died. The minutes reflect that at the meeting the USAFE contracting officer, Ms. Harris, took the position that the USAFE delivery orders issued 1 July 1991 were not intended or required to "mirror" the pre-existing level of maintenance coverage, that they were issued in error, and discontinuance notices were not required. USAFE was only willing to pay for service calls. Appellant maintained it was entitled to monthly charges or discontinuance notices. The parties held strong views, and no resolution was reached. (R4, tab 2C, ex. B at 4-10; tr. 4/93-94, 191)

38. On 22 August 1994, appellant submitted a certified claim in the amount of \$751,674 for the "enforcement of an authorized Government order for maintenance services" at the USAFE sites (R4, tab 2A at 1). Appellant requested enforcement of an order from the PCO to appellant allegedly given at the June 1991 workshop (*see* finding 11, *supra*). Without discontinuance notices, appellant asserted that it was obligated to provide maintenance coverage and entitled to receive payment for such coverage for the period 1 October 1991 through 31 August 1992 (R4, tab 2A). The PCO delegated resolution of the claim to USAFE (tr. 4/133-34).

39. The USAFE contracting officer's final decision, dated 21 June 1995, denied the claim in its entirety (R4, tab 2A at ex. A). Appellant filed this timely appeal, docketed as ASBCA No. 49083.

40. Appellant has presented proof of quantum in an exhibit that shows the equipment items discontinued effective 31 August 1992, contract monthly rates for

coverage, equipment total amounts for the 11-month period claimed, and totals by USAFE site. The total amount shown as due and payable is \$751,828. It is undisputed that the total amount shown is determined by rates for equipment coverage that are contained in the contract terms. (Ex. G-129 at 2-3, 7-45, tr. 2/128-30).

ASBCA No. 49100 - ACC

ADDITIONAL FINDINGS OF FACT

41. On 17 September 1991, appellant received the delivery order and IPMS lists for maintenance coverage at various Air Force sites in the Air Force Air Combat Command (ACC) for the period 1 July 1991 through 30 September 1991. ACC bases are grouped under the authority of the MAJCOM which has its headquarters at Langley Air Force Base in Virginia (R4, tab 3A; ex. A-201; tr. 2/142, 3/235).

42. On 14 October 1991, appellant received the ACC delivery order for the period 1 October 1991 through 30 September 1992. On 4 November 1991, appellant received the IPMS lists for this delivery order. IPMS lists for the delivery orders did not match the Phase IV equipment lists. Appellant did not bill the Government for items that were not covered by the delivery order. (Tr. 2/142-43)

43. In February 1992, appellant and ACC began their joint inventory reconciliation audit pursuant to SSC's request and the parties' agreement for how it would be conducted. The audit covered more than 70,000 pieces of equipment at approximately 42 bases worldwide. The inventories were completed on different dates between 27 February 1992 and 29 May 1992. (R4, tab 3A at ex. H; tr. 2/144, 3/191)

44. Appellant issued discrepancy reports that ACC used to modify the delivery orders to add items that were in its inventory, but had been omitted from IPMS lists. ACC corrected serial number identification of equipment to match the lists used at the end of the previous contract. ACC and Unisys prepared a list of ACC Condition 8 equipment items that were in the Unisys AIM database for billing at the end of the previous contract, but were not located in the audit (*see* finding 24, *supra*). No delivery orders were modified to cover Condition 8 equipment, and payment for maintenance coverage of these items has not been made (tr. 2/144-45).

45. The ACC position, which was stated by the ACC contracting officer in a memorandum, dated 19 January 1995, and the subject of testimony by both Mr. William O'Neill, Chief of Life Cycle Management at Langley AFB (ACC), and Ms. Deborah Harper-Bridges, a financial assistant at Langley who worked on the audit, was that Condition 8 equipment resulted from Unisys errors in its equipment list on the previous contract, which had expired, and since the equipment had not been located or shown to

exist, the contract did not require that maintenance charges be paid. (Exs. A-163, G-108; tr. 2/144-45, 3/181-82, 188, 3/238)

46. On 3 November 1994, appellant submitted a certified claim in the amount of \$489,940.80 for the “enforcement of an authorized Government order for Unisys maintenance services” at the ACC sites for the period from 1 July 1991 through the dates appellant was to discontinue maintenance coverage on items specified as Condition 8 equipment in the audit (R4, tab 3A at 1). The discontinuance dates were the completion dates of the audit for the different ACC sites. (R4, tab 3A at 1-2, 13, attach. H; tr. 2/143). The PCO delegated resolution of the claim to ACC (tr. 4/133-34).

47. The ACC contracting officer’s final decision, dated 1 June 1995, denied the claim in its entirety (R4, tab 3N). Appellant filed this timely appeal, docketed as ASBCA No. 49100.

48. Appellant has presented proof of quantum in an exhibit that shows the Condition 8 equipment discontinued at the time of the completion of the audit at 19 ACC bases, contract monthly rates for coverage, equipment total amounts for the number of months claimed at the different bases, and the total for each of the ACC bases. The total amount shown as due and payable is \$265,840.15. It is undisputed that the equipment listed for the total amount shown is all Condition 8 equipment for the listed ACC bases. (Exs. G-131 at 6, 13-122, J-1; tr. 2/153)

ASBCA No. 49214 - PACAF

ADDITIONAL FINDINGS OF FACT

49. On 19 August 1991, appellant received delivery orders and IPMS lists for maintenance coverage at various sites in the Pacific under the control of the Air Force Pacific Air Forces Command (PACAF) for the period 1 July 1991 through 30 September 1991 (R4, tab 4A at 8; ex. A-201; tr. 2/142, 3/212).

50. On 29 October 1991, appellant received delivery orders and IPMS lists for maintenance coverage at PACAF sites for the period 1 October 1991 through 30 September 1992. Equipment lists that were included in the delivery orders did not match the Phase IV equipment lists. (R4, tab 4A at 9; tr. 2/142)

51. In December 1991, PACAF issued Delivery Order TNQ8 and an IPMS list for maintenance of certain automated data processing equipment (Logistics Office Information System equipment known as “the LOIS equipment”) located at Hickam AFB that was covered at the end of the previous contract. The period of the delivery order was 1 December 1991 through 30 September 1992. No delivery orders were issued for the

period 1 July 1991 through 30 November 1991 for this equipment. No discontinuance notices were issued for this equipment. (R4, tab 4B)

52. Appellant and PACAF conducted their joint inventory reconciliation audit of equipment at nine bases pursuant to SSC's request. The inventories were completed on different dates between 23 March 1992 and 28 May 1992. Unisys issued discrepancy reports and PACAF and Unisys prepared a list of Condition 8 equipment at seven of the nine PACAF sites. (R4, tab 4A at ex. H; tr. 2/143-44, 3/205)

53. PACAF did not modify the delivery orders to cover Condition 8 equipment, and payment for the maintenance coverage of these items has not been made (tr. 2/144-45).

54. The PACAF position, according to Captain Craig Metzger, the PACAF quality assurance evaluator, was:

It was PACAF's understanding that this equipment did not exist, could not be found, no services had been rendered, and there was no need to pay Unisys for any of these Condition 8's.

(Tr. 3/206) According to PACAF, there was no written order to carry over coverage at the level of the previous contract and there was no requirement for discontinuance notices upon expiration of the previous contract (R4, tab 4J at attach. 2; tr. 3/211-12).

55. On 11 August 1992, PACAF requested guidance from SSC to respond to appellant's position that there was an automatic carryover of maintenance coverage on items covered under the previous contract if an item was not terminated in writing by a discontinuance notice (R4, tab 4J at attach. 1; tr. 3/207). Mr. Michael L. Thurman, a program manager at SSC sent a response for the PCO, dated 21 August 1992, that referred to the PCO's directive to Unisys to carry over maintenance into the first fiscal year ending 30 September 1991 and his instructions to the MAJCOMs to issue delivery orders for the continuation of maintenance and services. With respect to Condition 8 equipment, Mr. Thurman stated that Unisys was contending it was entitled to payment through the date of the completion of the audit. He advised that PACAF should only pay maintenance of Condition 8 equipment for the SSC-directed coverage for 1 July through 30 September 1991. There was no written agreement for coverage past 30 September 1991, and he concluded that payment was not due on Condition 8 equipment after that date. (Ex. G-58; tr. 3/148, 169-70) On 1 September 1992, the PCO clarified any misunderstandings to PACAF making reference to the 30-day notification of discontinuance of maintenance in the follow-on contract and stating in pertinent part:

b. Any changes to the 01 July 1991 equipment list (a duplicate of the 30 June 1991 equipment list) or level of maintenance, had to be made in accordance with the new contract terms and conditions. These terms and conditions include the same 30-day notification of discontinuance of maintenance or level of maintenance change to Unisys, in writing, as did the old contract. . . .

c. Equipment reconciliations, performed many months after the issuance of the order effective 01 July 1991 and any modifications thereto, may show discrepancies in equipment lists, delivery order coverage and actual placement of equipment. These discrepancies should be worked between [PACAF and Unisys] to a mutual agreement. Delivery orders should then be modified to reflect the actual equipment maintenance coverage for these periods.

(Ex. A-33) PACAF then advised SSC that it considered its payment to Unisys complete because there were no carry-over agreements from the Phase IV contract (ex. G-66; tr. 3/227-28).

56. On 2 November 1994, appellant submitted a certified claim in the amount of \$60,415.03 for the “enforcement of an authorized Government order for Unisys maintenance services” at the PACAF sites for the period from 1 July 1991 through the dates appellant discontinued maintenance coverage on items specified as Condition 8 equipment in the audit (R4, tab 4A at 1, 2). On 18 November 1994, appellant submitted a further claim on the same grounds for \$11,330.00 for maintenance coverage of specified equipment located at Hickam AFB.³ (R4, tab 4B) The PCO delegated resolution of the claims to PACAF (tr. 4/133-34).

57. The PACAF contracting officer’s final decision, dated 28 August 1995, denied the claims in their entirety (R4, tab 4Q). Appellant filed this timely appeal, docketed as ASBCA No. 49214.

58. Appellant has presented proof of quantum in an exhibit that shows the Condition 8 equipment discontinued at the time of the completion of the reconciliation audit at the seven PACAF bases, contract monthly rates for coverage, equipment total amounts for the number of months claimed at the different bases, and the total for each of the PACAF bases. The total amount shown as due and payable is \$42,222.90. It is undisputed that the equipment listed for the total amount shown is all Condition 8 equipment for the listed PACAF bases. (Exs. G-130 at 12-18, J-1) We understand from

the decreased amount of appellant's claim and the parties' stipulation on quantum that appellant has withdrawn its claim for the LOIS equipment at Hickam AFB.

DECISION ON ASBCA NOS. 49083, 49100, 49214

In the first three appeals, ASBCA Nos. 49083 (USAFE), 49100 (ACC), and 49214 (PACAF), appellant claims payment for continued maintenance coverage from the Phase IV contract to the subject Phase IV follow-on contract pursuant to contract provisions for minimum ordering, mandatory ordering, and the discontinuance provision in Clause H-10. Appellant maintains that it was entitled to payment at the contract rates until coverage of particular items of equipment was affirmatively discontinued by written notice separate from delivery orders. According to appellant, discontinuance could not be until the effective date of a notice, which the parties agreed in the joint inventory reconciliation audit was the date of the completion of the audit. The Government objects to payment for maintenance coverage with respect to equipment that it alleges was not the subject of a delivery order and has not been shown to have existed. The Government argues that appellant's interpretation of Clause H-10 as an obligation to continue providing maintenance coverage beyond the end date of a delivery order in the absence of a discontinuance notice is unreasonable *per se*.

Contract interpretation begins with the plain language of the agreement and must be aimed at construing the agreement in a manner that effectuates its spirit and purpose. The contract is to be read as a whole. An interpretation which gives a reasonable meaning to all parts will be preferred to one which leaves a portion of it "useless, inexplicable, inoperative, void, insignificant, meaningless, superfluous, or achieves a weird and whimsical result." *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991); *BMY-Combat Systems*, ASBCA No. 39495, 98-1 BCA ¶ 29,575 at 146,619-20. The principal objective in deciding what contractual language means is to discern the parties' intention at the time the contract was signed. *Winstar Corp. v. United States*, 64 F.3d 1531, 1540 (Fed. Cir. 1995), *aff'd*, 518 U.S. 839 (1996). The practical interpretation of a contract, as shown by the words or conduct of the parties before the controversy is given "great, if not controlling weight," in interpreting the contract. *Max Drill, Inc. v. United States*, 192 Ct. Cl. 608, 620, 427 F.2d 1233, 1240 (1970); *Coastal Dry Dock and Repair Corporation*, ASBCA No. 31894, 87-1 BCA ¶ 19,618 at 99,237.

In an indefinite quantity, indefinite delivery type of contract, the Government's obligation is limited to ordering the minimum quantity specified in the contract. FAR 16.501(b)(3). The Air Force identified minimum quantities in the contract as subCLINs 0006AA and 0007AA, which are the subject of the appeals, and subCLINs 0002AA and 0008AA, which are not in issue. The Government was required to order the quantities under the subCLINs "in support of sustaining and maintaining" the Phase IV SBLC environment (finding 1). Any other interpretation that the contract was elective and did

not contain minimum quantities would cause the contract to fail for lack of consideration. *See Apex International Management Services, Inc.*, ASBCA No. 38087 *et al.*, 94-2 BCA ¶ 26,842 at 133,550, *aff'd on reconsider.*, 94-2 BCA ¶ 26,852.

Clause H-10 provides that once the Air Force ordered maintenance coverage for a particular piece of equipment, the contractor was to provide maintenance coverage on the equipment unless and until the Government issued a written notice expressly discontinuing maintenance coverage on the particular piece of equipment. The clause specifically addresses the question of whether coverage automatically expired with the end of a fiscal year. The clause provides that omission of items from a current fiscal year delivery order does not constitute notice within the meaning of the clause. The clause further specifically requires 30-day advance written notice prior to the end of the fiscal year to discontinue coverage which would be effective the first day of the succeeding fiscal year. For items left off a delivery order at the beginning of the fiscal year, the omission did not constitute notice to the contractor that the Government no longer intends to order maintenance coverage. Affirmative notice regarding specified equipment was required by the terms of Clause H-10.

The Government objects to appellant's interpretation as rendering meaningless the type of contract, the contract minimums, and the ORDERING clause (Gov't br. at 98). We disagree. The ORDERING clause incorporated by reference into the contract required that all orders under the contract be in writing. The Government maintains that there could be no authorized provision of maintenance coverage in the absence of a written delivery order. Appellant agrees that maintenance coverage can only be ordered by delivery orders (app. reply br. at 45). Appellant submits that receipt of a delivery order was not required *prior* to extending continued maintenance coverage. We find no conflict between appellant's interpretation of the contract provisions and the ORDERING clause.

The Government further objects that appellant's interpretation violates the Anti-Deficiency Act, 31 U.S.C. § 1502 (the Act). No contracting officer can obligate funds beyond the period expressly granted by Congress which, for maintenance funds, is one fiscal year. The Government relies on the delivery orders issued each fiscal year as constituting notice of discontinuance for the items of equipment not specifically listed therein to avoid what it argues would be a violation of the Act. The Government was able, however, to discontinue services upon 30 days notice and avoid funding problems. We find no inconsistency between the contract provision requiring written discontinuance notices at the end of a fiscal year and the limitation on obligation of funds.

The practical interpretation of the contract by the parties before the dispute arose carries great weight in determining the intent of the parties and the meaning of their agreement. In the discussions prior to and at the time of the workshop, the PCO, who had responsibility for interpretation of the provisions of the contract, clarified that what was

to be ordered was the equipment that was covered for maintenance on 30 June 1991, at the end of the Phase IV contract. This equipment constituted the minimum quantities for the first fiscal year. The parties' contemporaneous interpretation was that the pre-existing level of equipment coverage would continue in the Phase IV follow-on contract. PCO Mr. Bullock repeatedly advised the MAJCOM/SOAs and Unisys that these delivery orders were to be issued effective 1 July 1991, and maintenance coverage continued beyond the end of the fiscal year until discontinued in accordance with the terms of Clause H-10 (findings 10, 11, 18).

The Government has argued that there is no basis for any carry-over from the previous Phase IV contract to the follow-on contract because it expired by its express terms and the follow-on contract required a written carry-over agreement (Gov't br. at 102-03). There is no written agreement for the transition to the follow-on contract. The Government objects to appellant's reliance on a verbal agreement with Mr. Bullock because there was no authorization for oral delivery orders, and he could not obligate funds for the MAJCOMs or implement the IPMS requirement for delivery orders. Appellant has replied that none of its claims rely on any verbal order from Mr. Bullock (app reply br. at 37). We have found that, without regard to any agreement between the parties, appellant relied on an interpretation of the contract provisions in deciding to provide maintenance coverage under the follow-on contract (finding 15). Appellant's interpretation was shared with the PCO. Mr. Bullock identified the minimum quantities that were ordering requirements to be fulfilled by the Government as what was in place at the end of the Phase IV contract. A failure of the Government to issue delivery orders for the mandatory minimums in an indefinite quantity, indefinite delivery contract, entitles a contractor to payment for the minimums or at least to be placed in as good a position as it would have been if the minimum quantities had been ordered. *See Maxima Corp. v. United States*, 847 F. 2d 1549 (Fed. Cir. 1988); *Merrimac Management Institute, Inc.*, ASBCA No. 45291, 94-3 BCA ¶ 27,251 at 135,783; *Apex International Management Services, Inc.*, *supra*, at 133,551; *PHP Healthcare Corp.*, ASBCA No. 39207, 91-1 BCA ¶ 23,647 at 118,452. Appellant was, accordingly, entitled to the issuance of delivery orders identifying the equipment in the SBLC environment effective 1 July 1991, and payment for maintenance coverage thereunder until notice of discontinuance pursuant to Clause H-10 was effective.

With respect to the first appeal, ASBCA No. 49083 (USAFE), the Government issued a delivery order effective 1 July 1991 for continued maintenance coverage of all equipment as established under the previous contract (finding 31). Upon issuance of a second delivery order for the period beginning 1 October 1991, appellant was required to provide continued maintenance coverage at the levels in effect on 30 September 1991. USAFE did not issue written notices affirmatively discontinuing service on specified items of equipment until 6 October 1992. Omissions of items of equipment from the IPMS lists accompanying the delivery orders did not constitute the notice required by

Clause H-10 of the contract. The USAFE identification of items as “discontinued” in its lists dated 6 October 1992, also did not constitute the required notice because it was not issued in advance of the period of time affected (finding 34). USAFE cannot excuse its failure to make payments to appellant in accordance with the contract and its delivery orders on the basis of its inventory errors. USAFE was responsible for the accuracy of its equipment lists. Appellant is entitled to be paid what was due under the contract. *See C. Martin Company, Inc.*, ASBCA No. 32607, 84-1 BCA ¶ 17,117 at 85,226; RESTATEMENT (SECOND) OF CONTRACTS § 345 (1981). The contract rates for equipment covered at the end of the previous fiscal year but omitted from the IPMS lists for the period 1 October 1991 through 31 August 1992, the effective date of discontinuance agreed to by appellant, were properly used to calculate accurately the amount due. The amount payable is \$751,828, with interest from the date the contracting officer received appellant’s claim, dated 22 August 1994.

With respect to the second appeal, ASBCA No. 49100 (ACC), the Government delivery orders issued effective 1 July 1991, were intended to provide for continued maintenance coverage of all equipment as established under the previous contract, using attached IPMS lists of equipment. During the joint inventory reconciliation audit the parties found that Condition 8 equipment was in appellant’s database, but not on the IPMS lists for delivery order coverage. Appellant relies on the written directive from the PCO to the MAJCOM/SOAs in connection with the audit that required modification of delivery orders to insure that all equipment covered in the previous contract was carried forward or deleted by a formal 30-day advance discontinuance notice as required by the contract. (App. br. at 74-76; finding 23) Appellant argues that the PCO had authority to mandate the audit that was recognized and accepted by the MAJCOMs (app. reply br. at 39). Appellant submits further that ACC received the benefits of the audit, and it is both unreasonable and unjustified for it to refuse to comply with the PCO’s instructions to make payment. The Government objects to any entitlement to payment because there was no valid delivery order for the equipment at issue (Gov’t br. at 113). The Government argues that the PCO had no authority to obligate MAJCOM funds to pay for Condition 8 equipment (Gov’t br. at 105-06).

The PCO acted within the scope of his authority in interpreting the application of the contract provisions to the undertaking of the joint inventory reconciliation audit. We have interpreted the contract to provide that the equipment items that were the subject of mandatory ordering under the Phase IV follow-on contract were what was ordered as of the end of the Phase IV contract. Clause H-10 provided that coverage of this equipment would continue until separate affirmative discontinuance notices were issued. Appellant was to continue maintenance coverage of all equipment beginning 1 July 1991, until the receipt of discontinuance notices issued in accordance with Clause H-10. This interpretation of the contract requirements was communicated by the PCO to appellant prior to contract award. Changes to the equipment list beginning 1 July 1991, which was

intended to duplicate the list for the period ending 30 June 1991, could only be made in accordance with the contract terms for discontinuance notices. ACC did not issue any discontinuance notices to appellant. All but one other of the MAJCOM/SOAs have complied with the parties' agreements for the conduct of the joint inventory reconciliation audit. They have provided delivery order coverage of and payment for Condition 8 equipment. ACC cannot excuse its failure to make payment for the Condition 8 equipment on the grounds that a valid delivery order (with accurate IPMS lists) was not issued. ACC also cannot excuse its failure to make payment on the grounds that Condition 8 equipment allegedly resulted from Unisys errors in its equipment list on the previous contract (finding 45). ACC was responsible for the accuracy of the equipment lists, and the Government has not shown that Unisys was at fault. ACC was obligated to issue delivery orders for maintenance coverage of the mandatory minimums, *i.e.*, the equipment ordered as of 30 June 1991. We have concluded that appellant is entitled to be paid what is due under the contract. The contract rates for Condition 8 equipment were properly used to calculate accurately the amount due from ACC. The amount payable is \$265,840.15, with interest from the date the contracting officer received appellant's claim, dated 3 November 1994.

With respect to the third appeal, ASBCA No. 49214 (PACAF), the PACAF delivery orders effective 1 July 1991, were also intended to provide for continued maintenance coverage of all equipment as established under the previous contract using attached IPMS lists of equipment, and no separate affirmative discontinuance notices were issued. PACAF cannot excuse its failure to make payment for the Condition 8 equipment. We have concluded that appellant is entitled to be paid what is due under the contract. The contract rates for Condition 8 equipment were properly used to calculate accurately the amount due from PACAF. The amount payable is \$42,222.90, with interest from the date the contracting officer received appellant's claim, dated 2 November 1994. As noted above, the remainder of this appeal has not been prosecuted and is deemed withdrawn (finding 58).

ASBCA No. 49913 - AFMC

ADDITIONAL FINDINGS OF FACT

59. During the third full fiscal year of the Phase IV follow-on contract (FY 94), appellant received delivery orders for maintenance coverage at various sites in the Air Force Material Command (AFMC) covering the period 1 October 1993 through 30 September 1994. Appellant has received payment pursuant to those delivery orders. On 24 October 1994, appellant received its first delivery order from AFMC for FY 95. The first delivery order and other delivery orders issued later in FY 95 were retroactive: they were written to cover the period 1 October 1994 through 30 September 1995. The

IPMS lists for the AFMC FY 95 delivery orders did not match the equipment lists for the delivery orders as of 30 September 1994. (Ex. A-202; tr. 2/146-48)

60. Appellant continued to provide maintenance coverage for all equipment that was covered on 30 September 1994 until it received notice of discontinuance pursuant to Clause H-10 in the contract. During the period 1 October 1994 through 31 March 1995, service calls were made on items of equipment that were covered on 30 September 1994, but not covered by a FY 95 delivery order. Appellant could not bill AFMC for maintenance coverage of items of equipment that were not covered by a delivery order, but held them in a suspense status. (Exs. A-182, G-134; tr. 2/153-56, 4/117, 185)

61. Appellant expected to receive delivery orders that would cover the omitted items of equipment and provide for payment for the period beginning 1 October 1994. Appellant's expectation was based on an accepted practice under the contract of issuing delivery orders covering periods of performance commencing prior to execution of the order (*see, e.g.*, findings 31, 33, 41, 42, 49, 50, *supra*). In the opinion of Mr. Cox, the PCO, this practice was "a common occurrence," that resulted from not getting requirements from the requesting organizations in a timely manner. In April 1994, after legal review, he advised one MAJCOM/SOA that payment could be made in such circumstances if a lease (or delivery order) were executed. In August 1995, the Government acknowledged that it had been unable to issue delivery orders before the beginning of a fiscal year because of the large number of orders requiring execution or renewal, the amount of time required for research to use IPMS, the lack of experienced personnel available to process orders, and the difficulties in maintaining accurate IPMS inventory records. Over 15,000 line items of equipment were purchased, leased, relocated, excessed or transferred to other agencies for reuse causing problems for the losing and gaining MAJCOM/SOAs to maintain accurate inventories of the items. (R4, tab 6A, ex. I at 114, 134, 186, 201; exs. A-171, -176, -204, -208; tr. 1/128, 2/154, 3/47, 4/111, 114, 165, 168)

62. By letter dated 2 March 1995, appellant raised its concern with lack of FY 95 funding for all equipment that was being maintained at AFMC bases. The letter stated:

In accordance with the contract, Unisys continues to service the equipment while at the same time, based on lack of FY95 coverage, we are unable to invoice and be paid.

(R4, tab 7E at ex. E) On 6 March 1995, Mr. Cox wrote to appellant that a blanket discontinuance of all items under a delivery order or all items in a MAJCOM was effective under the contract, and appellant could not reasonably take the position that the model number and serial number of equipment discontinued was required in a notice

when the contractor would be aware of the exact equipment being discontinued (ex. G-114; tr. 4/134-35).

63. On or about 13 March 1995, AFMC sent appellant a discontinuance notice for an attached list of equipment, effective 1 April 1995, in attempted compliance with Clause H-10 in the contract. Appellant accepted the effective date of the discontinuance notice. (R4, tab 7E at exs. A, F; tr. 2/147, 4/57, 185)

64. On 1 June 1995, Mr. Cox, the PCO, notified appellant that the practice of issuing retroactive delivery orders had been condemned by Air Force Headquarters and legal staff. There was a new requirement to issue delivery orders before the period of performance begins. The letter included the following interpretation of the application of Clause H-10:

. . . Although the Government is required to give a notice of discontinuance in accordance with H-10, the lack of a notice does not extend the period of performance until a notice is received. The Government cannot expect or demand that you continue to maintain that equipment after the delivery order expires. Thus, the Government has no authority to agree to pay for any interim maintenance for periods when a delivery order is not in effect. Any maintenance Unisys performs without a delivery order is considered to be at your own risk.

(Ex. A-77; tr. 2/150-51, 4/138, 165-66)

65. By letter dated 17 August 1995, appellant requested delivery order coverage for an updated list of equipment items for FY 95, beginning 1 October 1994 and extending through 31 March 1995, when they were effectively discontinued by the 13 March 1995 notice. The total amount of the request was \$235,136.10 (R4, tab 7E at ex. F). AFMC had not issued delivery orders for this equipment, although it had been covered as of 30 September 1994, and advised appellant that it was not, therefore, obligated to make payment. AFMC refused to issue or modify delivery orders to cover the additional items of equipment and has not paid the amount allegedly due. (R4, tab 7E at ex. G; tr. 2/148)

66. On 23 October 1995, appellant submitted a certified claim to the PCO in the revised amount of \$279,550.60 for enforcement of the terms of the Phase IV follow-on contract. Appellant asserted that under the terms of Clause H-10 it was required to provide maintenance coverage for equipment until it received the Government's notice of discontinuance. The claim is for maintenance coverage for the period 1 October 1994 through 31 March 1995 of the items of equipment listed in the Government's notice of

discontinuance, effective 1 April 1995. (Exs. A-180, -202; tr. 2/152, 4/184) On 27 October 1995, the PCO notified appellant that he had delegated resolution of the claim to AFMC (ex. G-125; tr. 4/133-34).

67. On 11 April 1996, the AFMC contracting officer denied the claim in its entirety (R4, tab 7B). Appellant filed this timely appeal, docketed as ASBCA No. 49905.

68. Appellant has presented proof of quantum in an exhibit that lists the items of equipment at eight AFMC sites for which appellant seeks payment, contract monthly rates for coverage, equipment total amounts for the six months claimed at the different sites, and the total for each of the AFMC sites. The total amount shown as due and payable is \$266,596.27. It is undisputed that the equipment listed for the total amount shown is taken from the contract terms. (Ex. G-133 at 6, 17-57; tr. 2/152)

DECISION ON ASBCA NO. 49913

The AFMC delivery orders issued effective 1 October 1994, provided for continued maintenance coverage of items of equipment that were billed as of the end of the previous fiscal year on 30 September 1994, but omitted some items of equipment that had been covered under the previous delivery orders. Appellant did not receive AFMC delivery orders providing payment for the items of equipment in issue because AFMC had not reconciled its IPMS lists with the equipment it wanted maintained by issuance of any discontinuance notice before there was a change of policy at Air Force Headquarters prohibiting the practice of issuing retroactive delivery orders. Appellant claims payment for the omitted equipment in accordance with Clause H-10. Appellant relies on an accepted practice of issuing delivery orders covering periods of performance commencing prior to execution of the order. (App. br. at 83-84) The Government objects to any entitlement to payment because there was no valid delivery order for the equipment at issue and argues that no maintenance services were provided (Gov't br. at 113). There is no indication in the record that the omitted equipment did not exist. Appellant has shown performance of services on equipment that was omitted from the delivery orders issued (finding 60).

There is no question in this appeal that there was a practice of issuing delivery orders covering a period of performance prior to execution of the order to allow for invoicing and payment for maintenance coverage when the Government was unable to maintain accurate equipment inventory for timely ordering. During the term of the contract appellant continued maintenance coverage from the end of one fiscal year through the beginning of the following fiscal year in accordance with the parties' practice. Appellant performed services as required. Appellant reasonably expected that delivery orders would be issued on the basis of previously ordered maintenance coverage. Upon receipt of the delivery order, it could invoice AFMC and receive payment.

A contractor is entitled to rely on a pattern of “backdating” delivery orders where there is a ratification by implication or inaction of the Government and has been held entitled to receive payment under the terms of a contract. *HFS, Inc.*, ASBCA No. 43748 *et al.*, 92-3 BCA ¶ 25,198. AFMC did nothing to discontinue items of equipment omitted from the FY 95 delivery orders that would have indicated to appellant that continued maintenance coverage was no longer desired. The Government had responsibility under the contract for accurate identification of equipment in its inventory and for providing affirmative notice of discontinuance. Appellant is entitled to payment of the contract amount due for the maintenance coverage provided for the period 1 October 1994 through 31 March 1995 in the amount of \$266,596.27, plus interest from the date of receipt of appellant’s claim, dated 23 October 1995.

ASBCA No. 49905 - Gunter Hardware

ADDITIONAL FINDINGS OF FACT

69. The PCO at SSC at Gunter AFB had responsibility for delivery orders and administration of computer maintenance coverage for sites where large computer systems were being “regionalized” under the Phase IV follow-on contract. The regionalized sites were, in addition to Gunter AFB, Kelly, Tinker, Hill, and Robins AFBs. During FY 94 appellant received payment pursuant to delivery orders issued by Gunter for maintenance coverage that continued in effect through 30 September 1994. (Ex. A-203; tr. 2/158-59)

70. In FY 95, appellant continued to provide maintenance coverage for all equipment that was covered on 30 September 1994 until it received notice of discontinuance pursuant to Clause H-10 in the contract (ex. A-171 at 24-32; tr. 2/159, 165-66, 4/114-15).

71. On 13 January 1995, Gunter issued discontinuance notices on some equipment effective 13 February 1995 (R4, tab 6A at ex. C).

72. In February 1995 Gunter completed an inventory of equipment subject to maintenance coverage under the contract (tr. 2/160).

73. In April 1995 Gunter issued delivery orders retroactive to the beginning of the fiscal year, 1 October 1994. They did not cover all the items of equipment that had been covered as of 30 September 1994. For the discrepancies in the lists of equipment at Tinker, Hill, and Robins AFBs, appellant was able to resolve the differences and obtain appropriate modifications of the delivery orders that were retroactive to 1 October 1994. Gunter and Kelly did not agree to modifications. In May 1995 Gunter issued delivery

orders covering the period 1 May 1995 through 30 September 1995. (R4, tab 6A at 7, tab 6A at ex. D; tr. 2/163)

74. Appellant made efforts to obtain the additional delivery order coverage it was claiming. On 12 July 1995, a meeting was held with Air Force Headquarters to discuss the issues relating to past lease and maintenance coverage. As a result of the meeting appellant expected the Air Force would “[i]nitiate ratification of coverage for past periods of performance for delivery orders issued by Gunter Contracting Office” (R4, tab 6A at ex. F). On 13 July 1995, the PCO sent a memorandum to the MAJCOM/SOAs regarding the contract requirement in Clause H-10 for discontinuance notices. The memorandum recommended issuing a discontinuance notice before the end of the fiscal year and emphasized the importance of issuing FY 96 delivery orders for renewals by 1 October 1995. (R4, tab 6A at ex. G) By letter dated 28 July 1995, to Gunter, appellant listed the equipment for which delivery order coverage had been omitted for FY 95 (R4, tab 6A at ex. H).

75. On 25 September 1995, the PCO issued modifications to delivery orders that were retroactive to 1 October 1994 to cover leased equipment for the full fiscal year. After the change in policy that prohibited retroactive delivery orders was announced to appellant on 1 June 1995, the PCO was still able to issue retroactive delivery orders when considered appropriate. The Government-owned items of equipment at Gunter and Kelly AFBs that had been omitted from IPMS lists were not included in the modifications. Appellant provided maintenance coverage for equipment at Gunter and Kelly AFBs that was covered as of 30 September 1994 and not subject to discontinuance notices, but has not been paid. (R4, tab 6A at 9-10; tr. 2/161, 4/164-65)

76. On 29 November 1995, appellant submitted a certified claim to the PCO in the amount of \$180,331.24 for enforcement of the terms of the Phase IV follow-on contract. Appellant asserted that under the terms of Clause H-10 it was required to provide maintenance coverage for the equipment until it received the Government’s notice of discontinuance. (R4, tab 6A)

77. On 8 May 1996, the PCO issued a final decision which denied the claim in its entirety (R4, tab 6C). Appellant filed this timely appeal, which was docketed ASBCA No. 49912.

78. Appellant has presented its claim in a chart showing three categories of equipment for which it maintains it was entitled to delivery order coverage and is now seeking payment in accordance with the terms of the contract. In the first category of equipment, maintenance coverage was ordered in FY 94, appellant continued to provide maintenance coverage into FY 95, and there were no discontinuance notices and no new delivery orders in FY 95. Appellant claims \$111,612.00, which includes \$79,530.84 for

equipment at Gunter AFB and \$32,081.16 for equipment at Kelly AFB. In the second category of equipment, maintenance coverage was ordered in FY 94, appellant continued to provide maintenance coverage into FY 95, there were no discontinuance notices, and Gunter did not issue or modify delivery orders covering the period 1 October 1994 through 30 April 1995, when it issued delivery orders for the period 1 May 1995 through 30 September 1995. Appellant claims \$20,716.43. In the third category of equipment, maintenance coverage was ordered in FY 94 and appellant continued to provide maintenance coverage into FY 95 until the discontinuance notice effective 13 February 1995. Gunter did not issue or modify delivery orders to provide for the period 1 October 1994 through 12 February 1995. Appellant claims \$2,789.47. (Ex. A-203; tr. 2/161-62)

79. Appellant has presented proof of quantum in an exhibit that lists the items of equipment at the two Air Force Bases for which appellant seeks payment, contract monthly rates for coverage, equipment total amounts for the number of months claimed at the different bases, and the total for each of the bases. The total amount shown as due and payable is \$135,117.90. It is undisputed that the equipment listed for the total amount shown is taken from the contract terms. (Ex. G-132 at 6, 13-18)

DECISION ON ASBCA NO. 49905

Appellant claims payment for equipment omitted from the FY 95 Gunter delivery orders in accordance with Clause H-10 and the accepted practice of issuing delivery orders retroactive to the beginning of the fiscal year (app. br. at 88-89). The Government objects to any entitlement to payment because appellant has never offered any proof of the performance of maintenance services on the equipment that is the subject of its claim (Gov't br. at 114).

Beginning 1 October 1994, in accordance with the parties' established practice, appellant provided maintenance coverage for all equipment at Gunter and Kelly AFBs that had been covered 30 September 1994 and under the terms of the contract was entitled to be paid at the contract rates on a monthly basis. The contract did not provide for payment for individual service calls, and it is not, therefore, incumbent on appellant to prove that service calls were made in order to invoice and be paid for maintenance coverage. Appellant is, accordingly, entitled to be paid under the terms of the contract the amount of \$135,117.90, plus interest from the date of the contracting officer's receipt of appellant's claim, dated 29 November 1995.

ADDITIONAL FINDINGS OF FACT

80. By the end of FY 94, appellant had installed the software provided by its subcontractor Storage Technology (STK) at the five regionalized sites administered by Gunter. The contract subCLIN 0009AE for software maintenance and upgrades, involved both correction services and software upgrades that were to be integrated and tested. Gunter issued delivery orders for subCLIN 0009AE for FY 94. (Finding 4, *supra*; tr. 2/170, 175-77, 182)

81. On 30 November 1994, appellant delivered STK software upgrades to Gunter (exs. A-193, -205; tr. 2/176, 180).

82. On 27 April 1995, the PCO issued delivery orders for software maintenance for the period 1 May 1995 through 30 September 1995 (R4, tab 5A at ex. B; tr. 2/178). The Government did not issue a discontinuance notice and has not paid for services provided during the period 1 October 1994 through 30 April 1995.

83. On 22 November 1995, appellant submitted a certified claim to the PCO in the amount of \$292,049.94 for enforcement of the terms of the Phase IV follow-on contract. Appellant asserted that under the terms of Clause H-10 it was required to provide maintenance support services for the software until it received a notice of discontinuance (R4, tab 5A)

84. On 8 May 1996, the PCO issued a final decision which denied the claim in its entirety (R4, tab 5C). Appellant filed this timely appeal, which was docketed ASBCA No. 49912.

85. Appellant has presented proof of quantum in an exhibit that lists the items of equipment associated with pieces of software at Gunter, Hill, Tinker, Kelly, and Robins AFBs related to the software maintenance for which appellant seeks payment, contract monthly maintenance rates, total amounts by item for the seven months claimed at the different bases, and the total for each of the bases. The total amount shown as due and payable is \$272,141.87. It is undisputed that the items listed for the total amount shown are taken from the contract terms. (Ex. G-133 at 6, 13-15; tr. 2/184-85)

DECISION ON ASBCA NO. 49912

Appellant claims payment for software support services for the period 1 October 1994 through 30 April 1995 that were not covered by the Gunter delivery orders that were issued on 1 May 1995. Appellant relies on Clause H-10 in the contract, the parties' prior

course of dealings, and the fact that the Government received the benefit of software support services during the entire fiscal year 1995. (App. br. at 90-91) The Government objects to any entitlement to payment because appellant has not offered any proof of the performance of software support (Gov't br. at 114-15).

Appellant provided maintenance support services on the STK software throughout FY 95 and is entitled to payment at the fixed monthly charges set forth in the contract. The Government's argument that no services were provided is without support. We have found that appellant delivered software upgrades during the part of the fiscal year before 1 May 1995 (finding 81). Furthermore, the contract provided for fixed rates of payment by the month for maintenance of the software and upgrades without reference to the number of maintenance calls or upgrades. Appellant is, accordingly, entitled to be paid under the terms of the contract the amount of \$272,141.87, plus interest from the date of the contracting officer's receipt of appellant's claim, dated 22 November 1995.

CONCLUSION

The appeals are sustained. Appellant is entitled to an amount of recovery in each appeal with interest payable pursuant to the Contract Disputes Act, 41 U.S.C. § 611, from the date the contracting officer received the claim that is the subject of the appeal. The amount of recovery and date of receipt of appellant's claims in appeals docketed as ASBCA No. follows:

49100	ACC	265,840.15	4 November 1994
49214	PACAF	42,222.90	2 November 1994
49905	Gunter Hardware	135,117.90	1 December 1995
49912	Gunter Software	272,141.87	28 November 1995

The record does not reflect the date of receipt of appellant's other two claims. The amount of recovery in ASBCA No. 49083 (USAFE) is \$751,828.00 with interest from the date the contracting officer received the claim, dated 22 August 1994. The amount of recovery in ASBCA No. 49913 (AFMC) is \$266,596.27 with interest from the date the contracting officer received the claim, dated 23 October 1995.

Dated: 25 August 2000

LISA ANDERSON TODD
Administrative Judge
Armed Services Board

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

NOTES

¹ DD Form 1155 is used for blanket delivery orders, which obligate funds for ordering under the contract by CLINs. They provide authority for ordering maintenance and services for specific pieces of equipment. (Tr. 3/186)

² AF Form 782 is used for listing equipment covered under a blanket delivery order (tr. 2/26).

³ In its complaint appellant alleged the amount of \$71,745 as due and payable. The amount included \$60,415.03 for the LOIS equipment at Hickam AFB for the period 1 July 1991 through 1 December 1991 and the amount of \$11,330 for Condition 8 equipment not covered from 1 July 1991 through the dates of the completion of the audit for the particular PACAF sites. The amounts demanded in the complaint were reversed from those in appellant's claims.

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA Nos. 49093, 49100, 49214, 49905, 49912, and 49913, Appeals of Unisys Corporation, rendered in conformance with the Board's Charter.

Dated:

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