

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
CJP Contractors) ASBCA Nos. 50076 50514
) 51971 51972
Under Contract No. N62467-91-C-4119)

APPEARANCES FOR THE APPELLANT: Marilyn H. David, Esq.
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APPEARANCES FOR THE GOVERNMENT: Arthur H. Hildebrandt, Esq.
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OPINION BY ADMINISTRATIVE JUDGE DELMAN

Under these appeals, CJP Contractors (appellant) seeks an equitable adjustment of \$150,792 and disputes the Government's assessment of liquidated damages in the amount of \$22,300 arising out of the delayed completion of its construction contract. We have jurisdiction under the CDA, 41 U.S.C. §§ 601 *et seq.* A hearing was held on entitlement only. For reasons stated, we grant appellant's claim in part and remit a portion of the Government's claim for liquidated damages.¹

FINDINGS OF FACT

1. Background

Appellant was awarded the subject contract by the Department of Navy, Naval Facilities Engineering Command (Government) on 15 September 1994, in the amount of \$232,700. The work included construction of a 1,500 square foot addition to Building

¹ The record consists of the transcript of the trial (tr.); appellant's trial exhibits (ex. A-); the Government's trial exhibits (ex. G-); the Rule 4 files (R4, tab); and appellant's Rule 4 supplement (app. R4 supp.) All references to the Rule 4 file shall refer to the Rule 4 file under ASBCA No. 50514, unless otherwise indicated.

900 at the Naval Weapons Station, Charleston, South Carolina, plus some incidental renovations to the existing structure.

The original contract completion date was 29 December 1994. Modification No. P00002, a bilateral contract modification, extended the project to 26 January 1995. Modification No. P00010 was a unilateral modification related to duct changes, and provided appellant with 5 additional days, up to and including 31 January 1995. (Tr. 3/162)

There is some confusion in the record regarding the beneficial occupancy/substantial completion date of the project. By letter to appellant dated 28 May 1996 the Government advised that this date was 22 September 1995 (ex. A-24), but at the hearing Government counsel abandoned this position, and contended that the substantial completion date was 11 September 1995 (tr. 3/164). There is no evidence of record from either party to establish this latter date. The Government's construction representative annotated on appellant's daily report of 15 September 1995, that this report was the last report for the project (R4, tab 5). Appellant also asserted in writing after completion of the project that 15 September 1995 was the substantial completion date (R4, tab 20), as did appellant's scheduling expert (ex. A-2 at 30). We find that the project was substantially complete on 15 September 1995.

During the course of the project, the Government advised appellant on a number of occasions that it was subject to liquidated damages at the rate of \$100 for each calendar day of delayed completion of the contract. *See* Contract, General Paragraphs, Section 01011, paragraph No. 5 (R4, tab 1) By letter to the contracting officer dated 20 February 1996, appellant stated that all project delay was attributable to the Government, and that in addition, appellant was owed roughly \$13,339 for changed work. In this letter, appellant identified a number of delays and disruptions to the job, which later became part of its claim and will be discussed below. (R4, tab 20)

By letter to the contracting officer dated 23 February 1996 appellant sought compensation in the amount of \$842.21 on behalf of its fire sprinkler subcontractor to install lower sprinkler line drops on account of ceiling height problems (R4, tab 21).

By letter to appellant dated 8 May 1996, the contracting officer asserted a claim against appellant for liquidated damages for 223 days of delay attributable to appellant, in the amount of \$22,300 (223 days at \$100 per day), less \$6,427.54 owed on the contract, for a balance owed the Government of \$15,872.46, plus interest (R4, 50076, tab 13). Appellant timely appealed this decision, and the appeal was docketed as ASBCA No. 50076.

By letter to the contracting officer dated 29 May 1996 appellant submitted a claim, seeking \$21,146.90 in additional costs, a time extension of 234 days, and requesting a contracting officer's decision (R4, tab 22). The contracting officer denied the claim, and a timely appeal was docketed under ASBCA No. 50514.

By letter dated 20 February 1997, appellant filed a claim for Eichleay damages for its claimed delay, in the amount of \$39,999.96 (app. R4 supp., tab 32). The Government failed to issue a contracting officer's decision, and the deemed denial was appealed under ASBCA No. 51971.

Appellant revised its claim by letter to the contracting officer dated 24 September 1998, seeking \$150,792 for compensable delay and contract changes (ex. A-25). Appellant sought a contracting officer's decision on the claim, as revised. The Government did not issue a decision. The Government's failure to issue a decision caused appellant to file another appeal, which was docketed as ASBCA No. 51972. All appeals were consolidated for hearing and decision.

2. Scheduling Analysis

Appellant engaged a scheduling consultant who prepared a report and gave expert testimony at the hearing. This consultant applied logic constraints to appellant's as-planned bar chart schedule for the project to derive an as-planned schedule with a critical path. He then reviewed project records to determine an as-built schedule and to allocate purported critical path delays attributable to the parties.

Appellant's expert concluded that the project was completed 260 days late. Of these 260 days, he determined that 152.5 days were attributable to the Government and 107.5 days were attributable to appellant. Of the 152.5 days attributable to the Government, he concluded that 28.5 days had been previously compensated under bilateral modifications and hence appellant was owed 124 days of compensable delay. (Ex. A-2 at 27)

Overall, this consultant was not a persuasive witness. Certain key aspects of his testimony were elicited by leading questions (tr. 2/169-72). He struggled with basic CPM concepts of early-completion and late-completion with which he should have been familiar (tr. 2/152-53). His trial testimony was not consistent with his deposition testimony in certain respects (tr. 2/249-50). He placed the submittal process on the critical path but did not study the submittal process in preparing his expert report (tr. 2/253). His derived as-planned schedule also did not incorporate all the activity durations from appellant's approved as-planned schedule (tr. 3/320-21). For these reasons, and based upon our review of all of his testimony, we cannot fully subscribe to

the conclusions reached by this witness, but our findings below do reflect some of his conclusions to the extent otherwise supported by the record.

3. Pre-Holiday Job Shut-Down

On 19 December 1994, the Government's construction representative advised appellant's superintendent on the site that Building 900 would be shut down the following week, the week between Christmas Day and New Year's Day; that he would not be working that week and presumably no other Government construction supervisor was available; and suggested that appellant speak to the Government's project manager about taking the week off and obtaining a time extension. Appellant's Daily Report No. 17 memorialized this conversation (R4, tab 5).

In accordance with the Government's request, appellant and the Government discussed the matter. The Government's project manager stated that if appellant shut down for the week, he would provide for a time extension (tr. 1/264). Appellant's project manager agreed to shut down and advised his superintendent on the site about the seven-day time extension. *See* appellant's Daily Report No. 20 (R4, tab 5). As far as this record shows, the subject of the time extension was not discussed by the parties thereafter.

Appellant shut down the following week, except that the superintendent was called back, on an emergency basis, to repair a water leak (tr. 3/15). Appellant would not have closed down the job during this period without a time extension (tr. 1/64). The Government did not issue a written contract modification.

At the end of the job and after the Government advised appellant that it was liable for liquidated damages, appellant sought the seven-day time extension referenced above (R4, tab 20). The contracting officer denied the claim, stating that appellant could have worked even if Building 900 was closed, and appellant's decision to forego work during this period was its own doing (R4, tab 24).

In accordance with the contract, appellant's daily reports were to be signed by the Government's construction representative and delivered to the contracting officer. Specification Section 01401, Quality Control, ¶ 7.2 (R4, tab 1). The Government's construction representative signed the daily reports that referenced this time extension and took no exception to the statements therein, nor did the Government's project manager or contracting officer ever contemporaneously contest the representations on these reports regarding the time extension.

Decision

The “holiday shut-down,” as it was known by the parties, was instigated by the Government for its own convenience. The contracting officer was on constructive, if not actual notice of the parties’ agreement, and did not countermand it. Assuming *arguendo*, that there was no formal agreement, the Government’s authorized representatives nevertheless caused appellant to shut-down for the week. We conclude that appellant is entitled to the seven-day time extension.

4. Undisclosed Underground Utilities

While performing excavation for certain foundation footers on 17 January 1995, appellant hit and damaged pipe lines not shown on the digging permit or on the contract drawings. Appellant’s superintendent promptly notified the Government’s construction representative, and the latter provided a Government crew the next day to repair the damage and relocate the lines. We find that this undisclosed pipe was a differing site condition under the contract. Appellant’s work was impacted by this event (tr. 3/16).

Appellant offered evidence that this incident delayed all footer work until the pipe was repaired by the Government the next day, and that appellant is entitled to a one-day time extension (ex. A-2 at 14). The record as a whole does not support the fact that all excavation and related work were suspended on 17 January 1995 pending repair of this pipe. Appellant continued to perform excavation on 18 January 1995, per Daily Report No. 33 (R4, tab 5).

Decision

We conclude that appellant is entitled to recover its proven costs related to this differing site condition. However we are not persuaded that this condition caused a delay to the overall completion of the project, and we deny appellant’s request for a time extension.

5. Undisclosed Unsuitable Soil

On 18 January 1995, appellant was digging footers for the building addition. When it reached the bottom of certain footers, appellant discovered that the virgin soil at the bottom of the hole would not support the footers because of the soil’s high moisture content. The Government was provided prompt notice of this condition before the soil was disturbed. We find that this condition was a different site condition under the contract.

On this same date, the Government's construction representative advised appellant to "dig out extra subgrade from the footer and go back with sugar sand or rock," in order to achieve proper compaction. *See* Appellant's Daily Report 33 (R4, tab 5). Appellant immediately began to perform this additional work, using "crush and run" rock as backfill, a rock typically used for this purpose (tr. 3/18).

When the Government's representative returned to the site, he advised appellant that "crush and run" was not acceptable; he wanted appellant to use "washed 57 stone" in lieu of crush and run rock. Appellant complied, and spent the remainder of the day, and the next day, digging out the footers already backfilled with crush and run and replacing the backfill with the washed 57 stone. *See* Daily Report Nos. 33 and 34 dated 18-19 January 1995. The contract did not provide that washed 57 stone was to be used for backfill purposes.

Appellant offered evidence that this series of incidents resulted in additional costs and delayed completion of the footer work and the overall project, and that it is entitled to a one-day time extension (ex. A-2 at 14). The record as a whole confirms this evidence.

Decision

We conclude that appellant is entitled to recover its proven costs related to the above differing site condition, and to a 1-day time extension.

6. Column Rework

Certain contract drawings provided that the columns for the new addition were to be placed on footings at elevation 35 feet from finish floor elevation. However, other contract drawings could be read to show that the columns could be placed two feet lower, at elevation 33 feet. (Ex. A-2 at 14-15) Appellant's structural steel subcontractor, Mid South Machine & Metal Works, Inc. (Mid South), relied on the latter drawings and submitted its shop drawings to appellant. Appellant approved the shop drawings and passed them along to the Government who also approved them. We find that these contract ambiguities were not glaring or obvious.

When the steel columns were fabricated and brought to the site for erection on 2 March 1995, it was determined that they were two feet too long. The columns were returned and reworked at the factory. Appellant's daily reports indicate that little, if any work, was performed on the site between 2 March 1995 and 7 March 1995 due to the need to rework these columns (R4, tab 5).

At first, appellant was of the view that the subcontractor was responsible for this error (ex. G-10). Upon reviewing the subcontractor's position, it reconsidered and

conceded that there was ambiguity in the drawings and it requested an equitable adjustment from the Government (ex. G-12).

Appellant offered persuasive evidence that this problem arose out of ambiguous contract drawings, which caused additional rework costs and critical path delay to the project in the amount of six days (ex. A-2 at 14-15).

Decision

Appellant has persuaded us that the Government was responsible for project delay and additional costs related to the rework of these columns. Appellant is entitled to a six-day time extension.

7. Window Supports

The contract required appellant to frame the windows in the new addition and attach them to horizontal girts that ran around the perimeter of the new structure. On the first floor the windows hung below the girt; on the second floor they rested on top of the girt. (R4, tab 1, contract drawings, sheets 4 and 8)

The window details and the wall details on the contract drawings showed vertical channels going from the window framing up to the roof elevation on the second floor and down to the concrete slab on the first floor (R4, tab 1, contract drawings, sheets 5 and 8). The contract drawings did not, however, specifically show how to attach these vertical channels at the roof elevation and at the concrete slab.

By letter to appellant dated 6 January 1995, appellant's structural steel subcontractor, Mid South, sought this information, and appellant passed the request along to the Government. The project was not ready for this framing at this point; appellant was still working on the foundation at this time. The Government advised on 13 January 1995 that the contract drawings were adequate to provide the connections (R4, tab 9).

Appellant disagreed with the Government's assessment and reiterated its request for information by letter dated 20 March 1995 (R4, tab 10). The Government, again, directed appellant to the contract drawings on 29 March 1995 (R4, tab 11). However, on that same date, a meeting was held on the site to discuss this and other structural issues. As a result of this meeting, the Government decided to obtain a sketch from its project engineer showing the connection detail.

Appellant's daily reports do not reflect any material project delays throughout February and March attributable to this problem. However, appellant's Daily Report No.

77, dated 3 April 1995, states that “no on site work was performed today” and “we are waiting for detail drawings on second floor window channel . . .” (R4, tab 5).

The Government’s engineering sketch was provided to appellant on 5 April 1995. This window support work was completed on 18 April 1995, per Daily Report No. 85 (R4, tab 5).

Appellant’s expert was of the view that this problem was attributable to unclear Government drawings and the project’s critical path was impacted 20 calendar days as a result of this problem, for which appellant is entitled to a time extension in the amount of 20 calendar days (ex. A-2 at 27). Appellant sought no additional costs to perform this work.

Insofar as pertinent, Section 05120, Structural Steel, provides as follows (R4, tab 1):

Part 3 EXECUTION

3.3 CONNECTIONS. Except as modified in this section, connections not detailed shall be designed in accordance with AISC M011.

The AISC M011 manual shows a number of standard details or connections and also provides guidance as to how to design a non-standard connection.² The parties’ experts differed over whether the subject connections were standard connections that were illustrated in the manual or non-standard connectors that needed to be designed. We find that these connections were non-standard connections and had to be designed by appellant. We also find that the Government’s drawings and specifications failed to provide sufficient information to enable appellant to design the connections. We find that appellant’s requests for guidance were legitimate and that appellant needed the sketch to design the connection.

² The AISC M011 manual applies to the contract only to the extent referenced therein.

Decision

Although this issue was a topic of discussion for a number of months, we are not persuaded that appellant's untimely receipt of this information significantly delayed the project as claimed by appellant, with the exception of the period 3 - 5 April 1995. Appellant is entitled to a three-day time extension as a result of this problem.

8. Roof Elevation/Alignment Discrepancy

When appellant's structural steel subcontractor, Mid South, erected the roof in March 1995, the metal deck was not uniformly supported by its underlying structural members; at certain locations there was a 2 1/2 inch gap between these members and the roof deck.

The parties met on site on 29 March 1995 to discuss this and other issues. Appellant's Daily Report No. 75 of this date, prepared by its superintendent, provides in pertinent part as follows (R4, tab 5):

Charlie [Government inspector], Randy Guy [Government project architect] Rudy Hern [subcontractor] and myself met to go over roof alignment problem on east end of the building. Randy agreed that there is a conflict on the plans and he will check with the A/E on what the elevations are.

The Government's construction representative at this meeting signed this report without taking any exception to the above language.

By letter to appellant dated 7 April 1995 the Government provided appellant a sketch from the project engineer, showing appellant how to resolve the gap, which appellant followed. Appellant claims additional time and money to perform this work.

At the hearing, appellant's structural expert identified the contract drawings where a gap between the decking and beam was shown. He also indicated that appellant's shop drawings appeared to rely on this gap because one of the beams in question was detailed in the shop drawings with a 2-1/2 inch offset (tr. 3/184-86). The Government's structural expert also stated that the contract drawings showed this gap and that the drawings in this respect were "unclear" (tr. 3/252-53).

Appellant's expert was of the view that appellant performed additional work to correct the roof alignment between 20 - 23 April 1995, that this was a critical path activity and that appellant is entitled to a three-day time extension as a result of this problem (ex. A-2 at 17). We find that appellant incurred additional costs to correct this problem.

However, appellant has not persuaded us that this roofing work was on the critical path at this, or at any other time. We also note that 23 April 1995 was a Sunday and appellant performed no work on that date.

Decision

We conclude that this roof alignment discrepancy was attributable to ambiguous contract drawings, and that appellant is entitled to recover its proven additional costs arising therefrom. However we are not persuaded that this problem contributed to the late completion of the project, and we deny appellant's request for a time extension.

9. Stairwell Discrepancies - Extra Subcontractor Work

The contract drawings located Stair 100 in such a way as to conflict with an overhead beam. When the stairwell was framed, it allowed inadequate headroom for the proper use of the stairwell. Appellant timely advised the Government of this problem, and was told to move the stairwell opening roughly 10" to accommodate the overhead beam. Appellant complied. *See* Daily Report No. 97 dated 2 May 1995 (R4, tab 5). It appears that appellant performed this work with its own work forces.

Appellant incurred additional costs to perform this relocation work. Appellant agreed to forego these costs in return for the Government's deletion of certain contract work related to the siding on the existing building.

By letter, to the Government, dated 20 February 1996, appellant sought additional time to resolve this discrepancy. It did not claim any costs on behalf of Mid South, the subcontractor who installed the stairs. During the project, appellant had asked the subcontractor whether it wished to provide any information in support of a claim, but Mid South did not provide any information (tr. 1/127).

During this appeal, Mid South raised the issue of payment for extra stairwell work (tr. 1/128). It provided appellant with two invoices, totalling \$770 for extra stairwell work (ex. A-27), but did not provide any facts supporting its claim.

Mr. Jones, a part-owner of Mid South, testified at the hearing with respect to the claims affecting Mid South. He was not familiar with the "stair invoices," nor did he request that they be prepared (tr. 1/309). He was also "not real clear" about the problems encountered by Mid South on the stairs (tr. 1/310).

Appellant's expert testified, and we find, that these stairs were not on the critical path of the project.

Decision

Assuming, *arguendo*, we have jurisdiction over Mid South's belated request for compensation, we do not believe that the record supports its entitlement to any additional costs. Nor are we persuaded that appellant is entitled to any time extension related to these stairs. This portion of the claim is denied in all respects.

10. Ductwork Modification and Delay

Per Daily Report No. 104 dated 15 May 1995, appellant advised the Government about a problem with the main duct system (R4, tab 5):

Duct work for HVAC is not going to work as per way plans show. We have 13" to put 16" duct in and then there is some places that the supply and return duct cross. We will need roughly 40" to do this. All 12" or larger duct will have to be reworked to 10" so duct will be above the ceiling. The structural beams are preventing us from making it work.

Discussions were had to seek a solution to this problem. First, appellant, with the Government's concurrence, dropped the height of the ceiling in an attempt to accommodate the duct. The duct size prescribed by the contract was still too large to fit into the ceiling. Appellant insisted that the duct size needed to be changed. The Government construction representative advised appellant on 30 May 1995 not to make any changes until advised by the Government.

From 15 May through 14 June, appellant continued to perform the contract work and to progress the job, including plumbing, sheet rock, fire sprinkler pipe work, conduit for the smoke alarm system, and duct work unaffected by the above problem. While appellant contends that this duct installation was a critical path activity in May, and that delay to the installation of this duct impacted the completion of the project on a day-for-day basis during this period, the record does not support this contention.

By Daily Report No. 123, dated 14 June 1995, appellant advised the Government that until it directed appellant how to proceed with the main duct work, the project work would be delayed as of 15 June (R4, tab 5). The Government issued unilateral Modification No. P00006 on 6 July 1995 to refabricate duct work, reroute electrical conduit, and refabricate gypsum board in order to accommodate job conditions. The unilateral modification was undefinitized. It also directed the appellant to advise the Government when 50% of a not-to-exceed amount was reached. Appellant did so. We find that the original contract drawings provided inadequate space in the ceiling for the contract work.

On 18 July 1995, appellant began to perform work preparatory to the duct work modification. *See* Daily Report No. 142 (R4, tab 5). It took roughly three weeks to install the duct work, as modified. Appellant's duct work expert testified that under the circumstances, this installation time was reasonable (tr. 2/97), and we so find. All duct work was complete by 18 August 1995 (Daily Report No. 161, R4, tab 5).

By letter to the Government dated 8 June 1995, appellant submitted its proposal for the changed work. Appellant sought \$9,156 with a time extension "to be settled at negotiation." (R4, tab 14)

It appears that the parties agreed on the additional costs but could not agree on a time extension for the work. By Modification No. P00009, the Government unilaterally extended the contract in the amount of 5 days, through 31 January 1995 (R4, tab 3).

Appellant contends that the main duct was, at all times relevant, on the critical path of the job, and hence it is entitled to a compensable time extension in the amount of 82 calendar days, reflecting the period between 15 May 1995 and 18 August 1995, less the planned installation time of 14 days (ex. A-2 at 19). No additional direct costs are sought.

Decision

We agree with the parties that duct work delays impacted the completion of the project, but we believe that appellant significantly overstates that impact, and the Government significantly understates it. We believe a reasonable measure of project delay attributable to the duct work change is 51 days, calculated as the delay between 15 June 1995, per Daily Report No. 123, and 18 August 1995, the date of completion (65 days), less appellant's planned installation time (14 days). Appellant is entitled to a time extension in the amount of 51 days attributable to Modification No. P00006.

11. Extra Work to Sprinkler System

Appellant's fire protection subcontractor manufactured and installed its sprinkler system as provided by the contract. We have found, *supra*, that the contract drawings provided inadequate space in the ceiling to accommodate all the contract work. As a result of these defective drawings, the Government does not dispute, and we find that the parties agreed in the field to lower the ceiling in an attempt to accommodate the work. As a result, appellant's subcontractor was required to return to the site to change and lengthen its sprinkler line drops to accommodate the lower ceiling (tr. 3/67, 121).

Appellant claimed reimbursement for this additional work by letter to the Government dated 23 February 1996. No additional project time was claimed. (R4, tab 21)

Decision

We are persuaded that the subcontractor's additional work was caused by the Government's defective contract drawings and that appellant is entitled to recover those costs shown to have been incurred as a result of these defects.

12. Door Frame No. 6

The contract drawings called for an 8" door frame in a 8" wall for a handicapped bathroom. On 1 September 1995, during demolition in the area in question, appellant discovered that the wall was only 6" thick, and that the door frame it had ordered could not be used. Appellant gave the Government prompt notice of this discrepancy (ex. A-22). With the Government's knowledge, appellant sought and obtained a smaller door frame and installed it on 11 - 12 September 1995.

Appellant incurred additional costs related to this work. The Government contended that appellant's project superintendent agreed to "trade" these costs for certain deleted contract work, but appellant disputed this allegation. The record does not establish any trade-off agreement.

Appellant's expert was of the view that substantial completion of the project was delayed three days as a result of this problem (ex. A-2 at 20). However other, unrelated contract work was performed during this period. *See* appellant's Daily Report Nos. 182, 183, 184 (R4, tab 5). We are not persuaded that but for this door frame problem, the project would have been substantially completed three days earlier.

Decision

We conclude that appellant is entitled to its provable additional costs incident to obtaining and installing Door Frame No. 6. Appellant's request for a three-day time extension is denied.

13. Extra Work Regarding Fire Extinguisher Cabinet Installation

The contract provided that appellant was to install a fire extinguisher cabinet in Corridor 103, next to Room 101. Appellant installed the cabinet, but it protruded into the corridor. The Government determined that this installation was unacceptable and ordered

its removal. Appellant contended that this installation was acceptable, and after removing the cabinet, claimed \$124 to patch the wall.

Appellant protested the Government's rejection of this work by letter dated 4 December 1995 (R4, tab 19), and by letter dated 20 February 1996 (R4, tab 20). In neither letter did appellant contend that a smaller cabinet was impossible to buy or install. Appellant's expert reviewed two catalogues, and could not find a cabinet that would fit the wall in question (ex. A-2 at 22). He did not conclude, however, that a smaller cabinet was impossible to buy or install.

Appellant's superintendent testified at trial concerning this work. At first, he stated that he "did not recall" why appellant did not order a smaller cabinet (tr. 3/98). After prompting from counsel through a leading question, he stated he could not buy a cabinet that would fit into the wall (tr. 3/99). The record is unclear whether the superintendent was responsible for purchasing this cabinet in the first instance. We find this testimony unpersuasive.

Decision

Appellant has not persuaded us that its cabinet installation conformed with contract requirements or that said contract requirements were impossible to perform. Appellant's claim in this respect is denied.

14. Extra Work to Paint Door

The Government's official punch list of November 1995 directed appellant to, *inter alia*, paint a certain administrative office door. By letter to the contracting officer dated 4 December 1995, appellant advised that it would perform this work under protest, contending that painting this door was not part of the contract, and that it was entitled to an equitable adjustment. Appellant's expert also concluded that this work was not provided for in the contract (ex. A-2 at 21). We so hold.

Appellant sought \$111.51 for this work by letter dated 20 February 1996 (R4, tab 20). No additional time for performance was sought. The contracting officer denied this claim, contending that appellant damaged the door and was responsible for the paint rework. The Government failed to provide any contemporaneous project documentation or any trial testimony to support the contracting officer's position.

Decision

We are persuaded by the evidence that this work was not required by the contract, and the Government's direction to paint the door constituted a change to the contract for

which appellant is entitled to an equitable adjustment. No additional time is granted for this work.

Summary and Conclusion

The delay days of the project are allocated between the parties as follows:

Original Contract Completion Date (as extended by bilateral modifications)	1/26/95
Substantial Completion Date	9/15/95
Total Number of Delay Days	232
Compensable Delay (Issues 3, 5, 6, 7, 10)	68
Non Compensable Delay	0
Delay Attributable to Appellant (Liquidated Damages at \$100 per day)	164

Appellant is also entitled to recover its provable direct costs, overhead and profit related to its claims for undisclosed underground utilities; unsuitable soil; column rework; roof alignment; the extra work for the sprinkler system; Door Frame No. 6; and extra work to paint office door.

The Government has also stipulated to appellant's entitlement to an equitable adjustment for complying with the Government's direction to apply an open-weave glass membrane method of sealing duct joints, and has conceded entitlement to pay additional costs incurred beyond those paid under Modification No. P00004 to draw electricity from a pole that was not identified in the contract drawings (Gov't brief at 33, 37). All entitlements are remanded for the negotiation of quantum.

ASBCA Nos. 50514, 51971 and 51972 which pertain to appellant's affirmative monetary claims, are sustained in part. ASBCA No. 50076, which pertains to the Government's claim for liquidated damages, is sustained in part.

Dated: 29 September 2000

JACK DELMAN
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 Nos. 50076, 50514, 51971 and 51972, Appeals of CJP Contractors, rendered in conformance with the Board's Charter.

Dated:

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