

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
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Couch Construction, L.P.) ASBCA No. 51495
)
Under Contract No. F08602-96-D-K003)

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OPINION BY ADMINISTRATIVE JUDGE LIPMAN

This is an appeal from a decision of the contracting officer denying appellant's claim for compensation for costs incurred by appellant and its subcontractor, the real party in interest, in performing rework, ordered by the contracting officer in the captioned contract for the removal and replacement of concrete on an aircraft runway. In addition to stipulations of fact, the record consists of the transcript of an evidentiary hearing as well as documentary evidence. We are to decide entitlement only.

FINDINGS OF FACT

1. On 3 June 1996, the Government, through MacDill Air Force Base, Tampa, Florida, solicited bids for the captioned contract, an indefinite delivery, indefinite quantity contract for the repair and replacement of airfield and roadway pavements. The contract called for the Government to issue individual delivery orders for pavement work with a guaranteed minimum of \$375,000 for airfield pavements and \$10,000 for roadway pavements for the base and option years. (Stips. 1, 2; R4, tab 1)

2. On 8 September 1996, the contract was awarded to Couch Construction, L.P. (appellant or Couch) as the low bidder (stip. 3). The contract incorporated by reference the following clauses: 52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984); 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 1984); 52.246-12 INSPECTION OF CONSTRUCTION (JUL 1986); 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994). (R4, tab 1)

3. On 24 September 1996, the contracting officer issued Delivery Order Number 5000, which called for Couch to repair and replace a portion of the concrete runway at the intersection of two runways, one active and one inactive, at the Avon Park Range. The statement of work contained a list of contract line items and provided a performance period of 59 days from the notice to proceed. The delivery order was valued at \$330,000 including a 30 percent premium because the work was to be conducted at a location remote from MacDill Air Force Base. The statement of work required that appellant excavate to 18 inches below the ground surface and place 18-inch thick concrete slabs, but did not include a line item for surveying. (Stip. 4; R4, tab 3)

4. Avon Park Bombing Range is an emergency landing field in Central Florida that services all of the Air Forces bases in Florida, particularly MacDill. The airfield has been refurbished in order to accommodate most of the aircraft in the Air Force inventory. Accordingly, the airfield is capable of servicing aircraft as small as the F-16 fighter and as large as the C-17 cargo jet. In fact, the purpose of Delivery Order 5000 was to replace deteriorated concrete with a thicker slab in order to accommodate the larger aircraft. (Stip. 5)

5. The delivery order was awarded prior to the end of the fiscal year in order to obligate funding. However, appellant was informed that the request for proposal and price negotiation would be delayed until a team of Air Force evaluators had an opportunity to visit the site and assess the relative importance of the areas to be repaired. (Stip. 6; R4, tab 2)

6. A team from Air Force Combat Command headquarters visited Avon Park in mid-October 1996 and determined that the concrete slab work was the most critical work to be done and should, therefore, be performed first. A site visit was conducted at the Avon Park runway on 13 November 1996 with Couch and its subcontractor, Highway Drainage (HD). HD's representatives included Mr. Joe Bohannon, and the Air Force representatives included Mr. Louis Lantner, the Government project engineer, and Mr. Kim Hulbert, the maintenance flight chief at Avon Park. During the site visit, a representative of either Couch or HD stated that, in order to assure its accurate replacement, a survey was required of an existing Army Corps of Engineers (COE) survey benchmark located at station 9+24.86 on the runway. The benchmark consisted of a brass disk placed in the cement flush with the surface and used to establish elevation for any survey work at Avon Park. (Stips. 7, 10; R4, tabs 4, 7; tr. 1/22, 98-100, 152, 158-59)

7. On 15 November 1996, the contracting officer sent appellant a request for proposal (stip. 8; R4, tab 5).

8. On 2 December 1996, Couch submitted its proposal for the work. It was consistent with the Government's projections in the statement of work except that it added a line item for "surveying," proposing \$1,000 for 10 hours of work. That addition was

based upon the earlier suggestion, acceptable to the Government, that a survey was required to establish the position of the benchmark disk for proper replacement. (Stip. 9; R4, tabs 6, 7)

9. On 9 December 1996, the contracting officer issued an amendment to the delivery order incorporating appellant's line items, including that for surveying. Other than the line item in the amendment, neither the original statement of work nor the amendment contained any language requiring a survey of elevations of any specific areas of the runway. The amendment also changed the performance period of the delivery order to 30 days. Appellant received the amendment on 11 December 1996. (Stip. 11; R4, tab 8)

10. On 11 December 1996, Couch entered into a subcontract with HD to perform the work contained in the line items in the proposal and in the amended delivery order, including that for surveying (stip. 12; exh. A-7).

11. The contract work required the removal and replacement of concrete on an interior 50-foot section of the 150-foot wide runway at the intersection of an active and an inactive runway. The area of concrete to be removed and replaced was 50 feet wide and 325 feet long. In 1987, the Air Force had added an asphalt extension to one of the runways. While the contract required replacing concrete slabs adjacent to the asphalt runway extension, all of the contract work at issue here consisted of replacing concrete on the portion of the runway constructed during World War II. The contract required that the concrete be replaced at the same elevations as those that existed prior to beginning the work. (Stips. 13-16; tr. 1/34, 94, 2/9)

12. The crown of a runway is its highest point (tr. 1/104-05). Its breakpoint is the place where the runway begins descending towards its edge so that it can shed water (tr. 1/108). A runway's slope is calculated by measuring its change in elevation over a distance, and then dividing that elevation change by the distance (tr. 1/61). Under Air Force regulations, grades are measured per 100 linear feet of runway (R4, tab 15). The elevations along the centerline of a runway are of substantially more importance than those at the edges because that is where aircraft usually take off and land; that is the reason this contract called for the replacement of only the inner 50 feet (tr. 1/104).

13. Prior to construction, the crown of the active runway and the crown of the inactive runway intersected at approximately the center of the runway, close to the benchmark (tr. 1/68, 158, 2/46).

14. In an action independent of this contract, Mr. Hulbert, the maintenance flight chief at Avon Park, contracted with Whitlock Land Surveying (Whitlock), a registered land surveyor with substantial experience, to survey the benchmark disk prior to concrete removal. The purpose was to ensure that the benchmark was accurately reset in the same location after replacement of the concrete. In order to be in the same location, the

benchmark would have to be placed on the same horizontal and vertical controls as prior to construction. The horizontal control is the geographical location and the vertical control is the elevation for the surveyed object. (Stip. 22; R4, tab 10, tr. 1/131-32, 138)

15. Whitlock established the horizontal and vertical controls of the benchmark disk by placing four 20-inch long rods in the ground outside of the construction zone and using them to reestablish the original position of the disk. Disturbance to any one or two of the rods following the survey and replacement of the disk would not present a problem because the others would still be available as reference points; in any event, there was no evidence of disturbance to any of the rods. (Tr. 1/141-43)

16. In order to properly survey the area of concrete to be removed, appellant, or its subcontractor HD, would have had to establish a survey grid of 25 by 25 foot sections. The survey would take about a day and cost approximately \$600 to \$800 to perform. (Tr. /146-47)

17. Prior to beginning the demolition of the existing concrete, neither appellant nor HD conducted a survey of the benchmark or took any elevations of the concrete. HD's Mr. Bohannan presumed that the contract line item for "surveying" was "for layout of the forms and all for surveying." In lieu of surveying instruments, HD set up two laser lights, one on the centerline of the active runway and one on the centerline of the inactive runway, and caused the two lights to intersect in the center of the two intersecting runways. HD used a common level to ascertain that the centerlines of the runways were at the crowns. Use of the laser lights, along with a tape measure along the lights, established that the grades of each of the runways began to break from the crowns at the centerlines. HD did not use a laser at any location other than the centerline to establish other elevations on the runway prior to removing the concrete. Following removal of the concrete, and prior to its replacement, it reset the lasers to reestablish the intersection of the lasers on the two runways. This was to enable HD to properly position the forms for the new concrete so that the new section of runway would match the elevations and grades of the section of runway which had been removed. (Tr. 2/10-16, 41-42, 46)

18. HD's Mr. Bohannan testified that, after replacing the concrete, the locations of the crowns of the two runways matched their locations prior to construction and that the manner in which HD used the laser lights to establish elevation is a common practice in the industry in this type of project (tr. 2/10, 14, 16, 57). However, HD has no written record of its laser activity or of any elevations derived from its use of the laser lights as described above (tr. 2/52-53), and has produced no independent evidence that its laser method was equivalent to the surveying required by the contract.

19. HD notified the Government that the work had been completed on 14 December 1996 (stip 17).

20. On 14 January 1997, a Government inspector inspected the concrete work and noted relatively minor discrepancies, but indicated that the job generally appeared to have been done reasonably well. However, because he considered his observations to be somewhat speculative, he recommended that an engineer conduct a site visit for further evaluation. (Stip. 18) Mr. Hulbert, the maintenance flight chief at Avon Park, also inspected the site and, by just looking at the runway, was unable to perceive any problem with the elevation (tr. 1/157, 159).

21. On 28 January 1997, the Air Force received concrete test results for the project. The concrete testing met standards and Mr. Lantner, the Government project engineer, recommended paying appellant for the job with the exception of \$30,000 to be withheld to cover the costs of repairs not relevant to this dispute. (Stip. 19)

22. On 10 February 1997, the Government conducted final inspection of HD's work and it identified a number of problems with repairs to the concrete not relevant to this dispute (stip. 21).

23. Whitlock attempted to reset the benchmark disk and discovered that, while it was able to establish the horizontal control, it could not similarly do so with respect to the vertical control because the concrete at that location was 1-7/8 inches higher than it had been prior to construction. In order to reset the disk into the proper vertical control, Whitlock would have had to place the disk 1-7/8 inches below the surface of the concrete. (Tr. 1/140-41, 147-48). On 3 March 1997, after asking Whitlock to recheck the information, Mr. Hulbert notified Mr. Lantner of Whitlock's discovery. Mr. Lantner was concerned that the discrepancy increased the size of a "bump" in the runway which could result in damage to landing aircraft. He considered that a .15 foot difference in the centerline over the section in question was very abrupt and constituted a drastic change in elevation (Stip. 23; R4, tab 9; tr. 1/166, 2/74). Upon being notified by Whitlock of the change in elevation, Mr. Hulbert also rode a car across the changed grade at approximately 70 miles per hour and verified that there was a bump in the runway which was not there previously (tr. 1/166).

24. Mr. Lantner questioned appellant regarding how the concrete had been installed. Appellant and HD claimed that the concrete had been installed to the elevations of the original concrete. In attempting to reconcile the difference between appellant's and HD's assertions and the surveyor's results, Mr. Lantner consulted with Mr. Hulbert. The latter indicated that he had obtained a COE "Runway Extension and Drainage Plan" dated March 1987 (ex. A-2) (Extension-Drainage Plan), which was not part of the captioned contract but which showed many of the elevations on the airfield. Mr. Lantner asserted that the review of the Extension-Drainage Plan showed that the pavement originally had a grade of 0.4%, which was consistent with the surveyor's findings. (Stip. 24; R4, tabs 9, 13; tr. 1/39, 46-47)

25. By letter of 6 March 1997, Couch informed the Government that the bump in the runway had been present, and visible to the naked eye, prior to construction, and that it should not be required to redo the work. It attached a 4 March 1997 letter from HD, which claimed that Mr. Bohannon had been concerned about the runway bump but had been instructed by the Government to place the concrete at the same elevation as that which was removed. (Stip. 26; R4, tabs 11, 12) The Government's Mr. Hulbert denies that the subject was discussed (tr. 1/168), and there is no contemporaneous evidence that HD or appellant were aware of a bump prior to construction or brought such knowledge to the attention of the Government.

26. The contracting officer replied by letter of 12 March 1997 which stated, in part, as follows:

In response to your letter dated March 6, 1997, we have a signed and sealed surveyor's statement indicating that the current elevation at Station 9+24.86 is 0.15 feet higher than the replaced elevation.

We request that you lower the concrete surface to the elevation of the replaced surface immediately, as it could damage landing aircraft. The elevation at Station 9+24.86 should be lowered by 0.15 feet and sloped to match the surrounding slabs.

Please submit a proposal on how this problem will be corrected, including a time schedule. This proposal will be forwarded to the project engineer for approval/disapproval.

(R4, tab 14)

27. Following a site visit and meeting with appellant on 24 March 1997, Mr. Lantner evaluated the surveyor's findings and, in an internal memorandum, concluded that HD had not replaced the concrete pavement to the same centerline grade as the previous pavement. He determined that the previous pavement had a 0.4% grade from Station 9+00 to 10+00 and that it had been replaced to a grade of 0.53%, which was "an unacceptable safety risk and must be corrected." He cited an Air Force regulation permitting a maximum allowable runway grade of 0.167% per 100 linear feet of runway and considered that the COE "must have received a waiver for the 0.4% grade," which he called "the maximum grade that would ever be allowed on any runway." He further indicated that, during the meeting, appellant had agreed to "fix the problem" but "required the previous elevations," which he attached to the memorandum. The elevations to which Mr. Lantner referred were obtained from the Extension-Drainage Plan. By letter of 17 April 1997, the contracting officer provided appellant with the Extension-Drainage Plan and a copy of the Air Force regulation, stated the need for correction of the problem, and requested appellant to "indicate [its] intentions

to resolve this problem **no later than 25 April 97**” (emphasis in original). (Stip. 28; ex. A-2; R4, tabs 15, 16; tr. 1/39-46)

28. By letter of 22 April 1997 to the contracting officer, appellant stated, in part:

Per your letter dated April 17, 1997, the drawings you have provided are inadequate for us to lay out the corrective work required. We will endeavor to the best of our ability to establish grades in the field and obtain the desired cross slopes and elevations that you desire. We will proceed as soon as possible after layout has been completed and accepted by the Air Force.

(R4, tab 17)

29. Mr. Lantner reviewed appellant’s letter and, in an internal memorandum dated 28 April 1997, indicated that he believed the Extension-Drainage Plan to be accurate and recommended that appellant’s proposal to correct the problem be required to (a) remove enough concrete to maintain a 0.4% slope as indicated on the Extension-Drainage Plan and (b) ensure that new concrete meets the surrounding concrete boundaries “without any steps or holes.” (Stip. 31; R4, tab 18)

30. By letter dated 8 May 1997, appellant informed the contracting officer that, in attempting to “correct the slab elevation problem” addressed in the contracting officer’s letter of 12 March 1997, its elevation instruments indicated that lowering the slab elevation as requested at station 9+24.86 would create an “invert” in the center of the runway. The letter then asked the following question: “Do we lower the concrete by .15 feet or slope the existing runway as per the adjacent runways?” (R4, tab 20)

31. As a result of appellant’s inquiry, Mr. Lantner, in an internal email, recommended that appellant match the elevations in the Extension-Drainage Plan, which he called “our best documentation of the concrete elevations before the project started” (R4, tab 21).

32. On 13 May 1997, the contracting officer advised appellant that, after consulting with the project engineer, “we request that you match the elevations listed on the Corps of Engineers drawings” (R4, tab 23).

33. At some point, either HD or Couch proposed using an asphalt miller on the concrete to solve the problem; Couch had milling equipment which could have been used and it would have been less expensive than replacement of the concrete (stip. 34; tr. 2/19). In an internal memorandum dated 10 June 1997, Mr. Lantner recommended that milling not be allowed because of the rough surface it created and its potential for causing damage to

aircraft from foreign objects. In accordance with a recommendation by a Government pavement engineer, Mr. Lantner recommended the use of a process known as diamond saw-cut grinding/profiling, which the Government estimated could be accomplished at a cost \$4.50 per square yard, or a total of \$7,125. (R4, tab 24) The contracting officer concurred and, by letter of 16 June 1997, advised appellant that milling was not recommended but that diamond saw-cut grinding/profiling was “an acceptable method of repair.” She asked appellant to advise of its proposed plan of action and of an estimated start date. (R4, tab 25)

34. The nearest equipment required for diamond saw-cutting was a considerable distance away. Even if available, HD considered that the cost of its shipment and use would exceed that of concrete removal and replacement, and that the latter method was, therefore, required (stip. 35; tr. 2/20-21).

35. By letter of 7 August 1997, the contracting officer established 22 September 1997 through 10 October 1997 as the time period in which appellant would have to replace the pavement. Upon request, appellant was granted a time extension. (R4, tabs 28, 29, 32)

36. By letter of 8 October 1997, the contracting officer forwarded the Government’s recommendations, based upon the Extension-Drainage Plan, as to how the concrete should be replaced (stip. 39; R4, tab 33).

37. On or about 25 October 1997, HD replaced the portion of the runway identified by the Government, which consisted of an area of 50 feet by 95 feet (4,750 sq. ft.), approximately 30 percent of the area originally removed and replaced. Because of appellant’s problems in basing the rework solely upon the Extension-Drainage Plan, the parties worked out an agreement upon elevations and a slope which better accommodated HD’s forms. HD incurred the additional costs of tearing out and replacing the runway concrete. After constructing forms, but prior to pouring the concrete, HD requested Whitlock to survey the elevations of the forms. It did so and created a “profile” of the replaced portion of the runway. That survey profile accurately reflects the profile of the runway as it presently exists (Accurate Profile). (Stips. 30, 42-44; ex. A-3); tr. 1/115, 2/48, 54)

38. The Extension-Drainage Plan constituted design drawings for the 1987 runway extension and, as such, purported to show the elevations of the area in question in this appeal as conditions existing at that time (tr. 2/60-62). In attempting to determine how the benchmark disk could have been replaced to a higher elevation than its location prior to construction, Mr. Lantner, lacking documentation other than the Whitlock surveys, referred to the Extension-Drainage Plan; he considered that its portrayal of existing conditions confirmed his belief that HD had changed the breakpoint of the runway by raising the level of the concrete at the centerline, thereby causing the bump and an unacceptably steep grade (R4, tabs 15, 16; tr. 1/65, 115).

39. Appellant advised Mr. Lantner that it considered that the Extension-Drainage Plan's elevations on the sides of the concrete pavement contained discrepancies and could not be used to correct the problem (tr. 1/115). During cross examination of Mr. Lantner at the hearing, the witness was used to demonstrate certain slope calculations which were intended to demonstrate (a) that elevations and slopes at the outer edges of the project, as depicted in the Extension-Drainage Plan, differed from those present in the Accurate Profile and (b) that the Accurate Profile reflected runway slopes which exceeded that permitted by regulation and those existing after HD's first concrete removal and replacement. Based upon the two documents, it also appeared to Mr. Lantner that, following HD's performance of the corrective work, the crowns of the two runways no longer intersected at the center of the two runways. However, the scales used in producing the two documents differed, and calculations of slopes in the Accurate Profile were made over runway distances which differed from the distances upon which the regulation requirement and the calculations using the Extension-Drainage Plan were based. (R4, tab 15; exs. A-1, -2, -3; tr. 1/70-96) As a result, the record does not clearly reflect (a) the extent to which the two documents differ, and (b) the manner in which the elevations and slopes portrayed in the either the Accurate Profile or the Extension-Drainage Plan compare to those which existed prior to construction. We are, therefore, unable to base findings thereon.

40. By letter of 26 November 1997, appellant submitted a certified claim in the amount of \$89,907 on behalf of HD for the additional costs incurred in replacing the runway (stip. 45; R4, tab 42). We find that the contracting officer received the claim on 28 November 1997.

41. On 16 January 1998, the contracting officer sent appellant a letter which stated, in part:

In an effort to come to a decision regarding your claim, please provide a copy of your firm's initial survey or other associated documentation for subject project. This survey should specify what existing conditions were prior to start of work. Modification No. 1 listed this survey as a line item, and provided 10 hours @ \$100.00/hr. to accomplish it.

(R4, tab 43)

42. By letter of 22 January 1998, appellant forwarded HD's response to the contracting officer's request. That response was, in part, as follows:

. . . there was not a preliminary survey done on the Avon Park Runway. Highway Drainage was instructed to match existing pavement. In order to do that, lasers were setup [sic] on the

centerline of [the active runway] and [the inactive runway]. Both runways were profiled at twelve and one half feet interval [sic] by use of lasers in order to arrive at PT. PT was established at the intersection of the centerlines of the two runways. From the point of intersection centerline [active runway] and centerline [inactive runway], the pavement was sloped at a grade to allow it to match the newer runway extension.

The survey line item providing for 10 hours @ \$100.00/hr. was used to cover the laser cost for the above work.

As pointed out previously, our position on this matter is supported by the fact that the concrete runway we removed was in excess of forty years older than the newer runway extension. And there would have been no reason to break the grade of [the active runway] at a location south of the intersection of the two centerlines. Certainly, the Air Force in [sic] not contending that their plans in the 1940's anticipated the runway extension done in the 1980's.

(R4, tab 44)

43. The Government's Mr. Lantner reviewed HD's letter and recommended that the claim be denied. He concluded that, had appellant and HD excavated and placed concrete slabs based on the contract requirements, the original grade of the concrete would not have changed. He further concluded:

The contractor was paid to survey the runway. The contractor has now admitted he did not perform a preliminary survey of the runway, but instead made an assumption 'PT was established at the intersection of the centerlines of the two runways.' Based on this assumption, he moved the PT point from Station 9+00 to Station 9+24.86. This caused the runway to have an unsafe grade of 0.53% (0.4% is the maximum safe grade). The government had no choice but to demand the contractor correct this deficiency.

(R4, tab 45)

44. The contracting officer concurred with Mr. Lantner's recommendations and denied the claim in her decision dated 27 January 1998 (R4, tab 47). Appellant made timely appeal.

DECISION

Under this construction contract, appellant, by its subcontractor, HD, was to remove existing concrete on a portion of a runway and to replace it to the same elevations, but with a thicker concrete slab to accommodate larger aircraft. The contract also included a line item of work for “surveying.” After completion of the work, the Government, based on the results of the Whitlock independent surveys of a brass benchmark on the runway, concluded that the location of the benchmark was nearly two inches higher than it had been prior to construction and that the runway had a large bump, or at least a bump that was larger, and considered unsafe for aircraft, than had existed prior to the contract. The Government required that appellant correct the work, which appellant accomplished by ripping out and replacing a portion of the concrete. Appellant submitted a claim for costs incurred for work in excess of that required by the contract.

Under the contract’s Inspection of Construction clause, the Government is entitled to strict compliance with its contract requirements and may require the contractor to replace or correct nonconforming work. *See S.S. Silberblatt, Inc. v. United States*, 433 F.2d 1314 (Ct. Cl. 1970). It also bears the burden of proof that the work it requires to be replaced or corrected at the contractor’s expense did not conform to the contract requirements. *George Bernadot Co., ASBCA No. 42943, 94-3 BCA ¶ 27,242; see Southwest Welding & Mfg. Co. v. United States*, 413 F.2d 1167 (Ct. Cl. 1969).

Here, based upon the Whitlock surveys, it is quite clear that appellant, in its initial effort to replace the concrete, failed to meet its obligation to restore the concrete to its original elevation, at least at the location of the benchmark. In its post-hearing briefs, appellant does not directly deny that it failed to return the concrete to its original elevation. Rather, it asserts that “there is a lack of evidence to explain why the surveyor could not reset the [benchmark] disk to its preconstruction elevation” (initial brief at 18). Appellant errs. The Whitlock surveys demonstrate that the benchmark could not be reset to its preconstruction elevation because that elevation was under nearly two inches of concrete. Appellant could not produce evidence on that issue because it failed to perform a survey as required by the contract and, although HD used lasers to attempt to establish the centerline elevation which could then be matched, it had no documentation of what those elevations were or whether it achieved its intended result.

Appellant further contends that the Whitlock surveys, at most, established only that the runway was 1-7/8 inches too high in the specific six-inch area of the benchmark and that the Government should not have required it to remove and replace 4,750 feet of concrete based solely upon that determination. Appellant asserts that the Government’s requirement that it remove and replace that extensive area of concrete was based on the Corps of Engineers Extension-Drainage Plan which, although not part of this contract, the Government considered to be the “best evidence” of conditions prior to construction.

Based on slope calculations elicited during trial testimony, appellant questions the accuracy of the Extension-Drainage Plan. It also contends that similar calculations using the Accurate Profile, prepared by Whitlock for HD prior to the second concrete replacement, indicate runway slopes which closely matched those existing after HD's first concrete replacement, and that appellant should, therefore, not have been required to perform the work a second time without compensation.

We have found that appellant failed to meet its contractual obligation and restore the runway -- at least at the location of the benchmark -- to its elevation prior to construction, thereby causing, or enlarging, a bump and unacceptable slopes in the runway. That finding was based on the Whitlock surveys, the only existing contemporaneous evidence, appellant having never conducted a survey.

With regard to the extended area surrounding the benchmark site, we conclude that the evidence is sufficient to warrant the Government's conclusion, in view of the raised elevation at the benchmark following HD's work, that appellant must bear responsibility for the unacceptably steep slopes of the surrounding runway. The Government, as appellant contends, did use the Extension-Drainage Plan, the only evidence it possessed, in the absence of appellant's required survey, of the elevations prior to construction. It reasonably based, with some accommodation to appellant, the elevations and slopes to be achieved in the rework upon that evidence. We are unable, based upon the calculations elicited by appellant at the hearing, to conclude either that the Extension-Drainage Plan was inaccurate or that the Accurate Profile demonstrates pre-construction runway slopes closely matching those which followed HD's initial concrete replacement. Our findings reflect inconsistencies in the calculation methodology, and the evidence does not lead us to conclude that the Government ordered work for which compensation is due.

The appeal is denied.

Dated: 31 January 2001

RONALD JAY LIPMAN
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

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

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

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 51495, Appeal of Couch Construction, L.P., rendered in conformance with the Board's Charter.

Dated:

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