

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
M.A. Mortenson Company) ASBCA Nos. 53393, 53405, 53406,
) 53407, 53408
Under Contract No. DACA85-94-C-0031)

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OPINION BY ADMINISTRATIVE JUDGE ROME

This is our fifth Rule 11 opinion deciding entitlement on appeals by M.A. Mortenson Company (Mortenson) from numerous final decisions of the contracting officer (CO) denying its constructive change claims under its contract with the U.S. Army Corps of Engineers for construction of the Composite Medical Facility, Phase II, at Elmendorf Air Force Base, Alaska (CMF project). The Corps' Elmendorf Resident Office (ERO) administered the contract. Our prior opinions are *M.A. Mortenson Company*, ASBCA Nos. 53105 *et al.*, 04-2 BCA ¶ 32,713 (*Mortenson I*), *M.A. Mortenson Company*, ASBCA Nos. 53123 *et al.*, 04-2 BCA ¶ 32,787 (*Mortenson II*), *M.A. Mortenson Company*, ASBCA Nos. 53146 *et al.*, 05-1 BCA ¶ 32,846 (*Mortenson III*), and *M.A. Mortenson Company*, ASBCA Nos. 53183 *et al.*, 2005 ASBCA LEXIS 24 (18 March 2005) (*Mortenson IV*). We incorporate herein such of our prior findings concerning the contract's provisions and other matters as are relevant.

Appellant supports each of its appeals with affidavits of Darryl Kloepfer, operations manager and vice president of its drywall subcontractor, Pacific Partitions/Specialty Interiors, J.V. (PPSI). It also supports ASBCA Nos. 53405 through 53408 with the affidavit of its CMF project coordinator, Paul Tate, which addresses

general project coordination issues, but not the particulars of individual appeals. (*See Mortenson I*, findings 13-15)

ASBCA No. 53393
(Revisions to Walls and Soffits at Mail/Message Center (Room 2D107))

This appeal involves appellant's \$1,663 claim for costs of revising walls and soffits at the Mail/Message Center.

FINDINGS OF FACT

1. The contract's FAR 52.236-21, SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 1984) clause provides that the contractor promptly is to submit any drawings or specifications discrepancy to the CO, who is promptly to make a determination in writing, and that the CO is to furnish from time to time such detailed drawings and information as considered necessary. The Contract Drawings clause states that the contractor is to check all drawings upon receipt; compare them and verify figures before laying out the work; promptly notify the CO of any discrepancies; and be responsible for any errors that might have been so avoided. The clause also provides that omissions from drawings or specifications or the misdescription of work details manifestly necessary to carry out their intent, or that are customarily performed, do not relieve the contractor from performing that work. (*See Mortenson I*, findings 3, 4)

2. Technical Specification Section (TS) 05400, COLD-FORMED METAL FRAMING, describes material and installation requirements for framing with metal studs (R4, tab 11).

3. Drawing No. A2.313, SECOND LEVEL AREA '2D1' FLOOR PLAN, depicts the Mail/Message Center and refers to Drawing No. A7.330, which in turn refers to Millwork Detail 2 on Drawing No. A8.910, MILLWORK PLANS & ELEVATIONS (R4, tab 3 at ex. A, tab 13). Detail 2, MEDSQD/ADMIN OFFICE (2D106), depicts a P-Tube Station between two sets of mail/message distribution boxes and indicates a 7'-0" elevation from finished floor to bottom of soffit (R4, tab 14). Detail 2 cites to Details 5, 9, 10 and 15 (which is inoperative) on Drawing No. A8.924, MILLWORK SECTIONS & DETAILS. Details 5, 9, and 10 depict millwork, wood trim and plastic laminate-covered wood, and 1'-2" deep walls to the inside faces of a ¾" fascia. Details 5 and 10 also indicate metal studs within the wall cavity. (R4, tab 15)

4. Detail 2 also cites to Detail 4, TYPICAL P-TUBE STATION, on Drawing No. A8.701, MISCELLANEOUS DETAILS. Detail 4 designates the wall type as A4/-, unless otherwise noted, which, per Drawing No. A2.701, PARTITION TYPES, is 1-hour fire-rated with one layer of 5/8" gypsum wallboard (GWB) on each side of 4" metal studs (R4, tabs 16, 17).

5. Drawing No. A3.313, SECOND LEVEL AREA '2D1' REFLECTED CEILING PLAN, depicts a 7'-2" and a 7'-8" typical ceiling height for the Mail/Message Center (R4, tab 12).

6. Drawing No. S-6, STEEL STUD DETAILS, at Detail 9, METAL STUDS OPENING FRAMING, shows sill, jamb, and header construction for openings up to 12 feet (R4, tab 18).

7. On 27 November 1996 Mortenson submitted RFI No. 2482, stating that Details 5 and 10 were sections through openings in the Mail/Message Center but that the floor plan did not designate a wall type through the Center; studs were shown but without size or gauge; and GWB was not shown on any millwork details for the area. It inquired whether there was to be wood or 1'-2" wide GWB chase wall surrounding the Center's mail boxes. It also noted that the ceiling plan showed a 7'-2" soffit above the Center, whereas Detail 2 showed 7'-0", and asked for clarification. The ERO responded on 12 December 1996 that the Center was to be installed into a +/- 1'-2" chase wall per Details 5 and 10, with 16-gauge studs framed in accordance with the contract's requirements for openings; Mortenson could use wood or GWB facing for the chase wall – whichever it had used in bidding - but GWB facing would agree with the room finish schedule for the Center and Room 2D106 (*see* finding 3); and soffits on both sides in those rooms were to be at 7'-8" with a +/- 1'-2" wide header/bulkhead extending down to the millwork to agree with Detail 5. (R4, tab 4)

8. On 6 March 1997 Mortenson requested a \$1,318 change order, largely for PPSI's alleged extra costs to stop work and remobilize framers, complete soffit layout, demobilize framers, and install additional GWB at the chase wall. The Administrative Contracting Officer (ACO) denied the request on 12 March 1997. (R4, tabs 6, 7)

9. On 7 December 2000 Mortenson submitted a \$1,663 claim, now also including alleged extra costs of subcontractor Klondike Painting & Decorating. Mortenson contended that the contract did not supply adequate information to construct the Mail/Message Center; structural supports and fascia material were not designed; there was a discrepancy in soffit height above the mail slots; the ERO had no contractual basis for referring to the contract's opening details in specifying the wall's structural components; the ERO's creation of a header, separate from the rest of the soffit, resulted in a more complicated soffit detail than depicted in the original contract; and the ERO improperly had delegated design responsibility to Mortenson. (R4, tab 3) On 5 March 2001, the CO denied the claim (R4, tab 1).

10. In his affidavit, Mr. Kloepfer reiterates Mortenson's claim contentions, including that the ERO had delegated to Mortenson and its subcontractors design responsibility for "many aspects" of the Mail/Message Center (Kloepfer aff., ¶ 8) and that

the government's poor design added "considerable scope" to PPSI's work (*id.*, ¶ 10). He does not state whether Mortenson or PPSI engaged in any pre-bid document review concerning the Center or, if so, the original scope of work and type of wall materials they contemplated. He does not clearly specify the design work appellant or PPSI allegedly assumed.

11. The government acknowledges that Drawing No. A3.313's depiction of the Mail/Message Center ceiling's height at 7'-2" and at 7'-8" is a discrepancy (gov't br. at 115; *see also* R4, tab 1 at 5, 7).

DISCUSSION

Appellant alleges that the plans and specifications pertaining to the Mail/Message Center were defective and that the ERO constructively changed the contract's scope by its response to RFI No. 2482. The government alleges, *inter alia*, that: with the exception of a discrepancy in ceiling height, which it acknowledges (*see* finding 11), but asserts was a minor misdescription, the contract was clear as to required Mail/Message Center construction; under the Contract Drawings clause, appellant was not relieved from performing the misdescribed work; and the ceiling and soffit height information the ERO provided in response to Mortenson's RFI was a clarification, not a contract change.

The contract contained information concerning construction of the Mail/Message Center, including material and installation requirements for framing with metal studs; sill, jamb, and header construction for openings; and millwork, woodwork and wall type and dimensions (findings 2-5). Appellant noted a discrepancy concerning soffit height and asked for clarification of that and other matters. Regardless of whether the discrepancy was minor, which we need not decide, the ERO responded with the requested clarifications, all in accord with the Specifications and Drawings for Construction and Contract Drawings clauses. (*See* findings 1, 7)

In his affidavit, Mr. Kloefer does not state whether appellant or PPSI engaged in any pre-bid document review concerning the Mail/Message Center or, if so, the original scope of work and type of wall materials contemplated. He does not clearly specify the design work appellant or PPSI allegedly assumed. (Finding 10)

In short, appellant has failed to prove that it engaged in any extra work that was beyond the scope of the contract.

DECISION

ASBCA No. 53393 is denied.

ASBCA Nos. 53405 and 53406
(Column Framing/Soil Pipe Conflict: Rooms 1B135 and 1A129)

These appeals involve claims of \$893 and \$862, respectively, for alleged extra costs resulting from pipe and column framing conflicts. ASBCA No. 53405 pertains to column line 10/E and ASBCA No. 53406 to column line 4/C.

FINDINGS OF FACT

12. TS 13060, INTEGRATED BUILDING SYSTEM [IBS] REQUIREMENTS, paragraph 1.3.2, Connection Zones, requires that the contractor coordinate the work of all trades to resolve potential interferences “*prior to installation* of the work of any trade [emphasis added]” (see *Mortenson I*, finding 8).

13. TS 15011, MECHANICAL GENERAL REQUIREMENTS, paragraph 1.5.1, Coordination, calls for the contractor to:

Coordinate the work with all trades engaged on the project.
Review contract documents to verify the location of the various building components and items to be installed by all trades.

(See *Mortenson I*, finding 16)

14. TS 15405, PLUMBING, GENERAL PURPOSE AND HOSPITAL, provides at paragraph 1.2.2:

The Contractor shall become familiar with details of the work, shall verify dimensions in the field, and shall advise the [CO] of any discrepancy *before performing any work* [emphasis added].

(Bd. ex. 1, vol. 3, § 15405 at 10)

15. Drawing No. A8.202, LEVEL ONE COLUMN DETAILS, for column line 10/E, gives construction dimensions, shows pipes within the column enclosure, and refers to Sheet Note 2, which states: “PLUMBING PIPING HAS BEEN INDICATED FOR COORDINATION. COORDINATE WITH MECHANICAL PLANS.” (R4, tab 21) Drawing No. S2.12, FIRST LEVEL AREA ‘B’ FOUNDATION/FRAMING PLAN (R4, tab 18), cites to typical Detail 11 on Drawing No. S4.01, FOUNDATION DETAILS, for construction of the column (R4, tab 19). Detail 11 requires a 4-sided control joint to isolate the concrete at the column from the surrounding slab (*id.*; Kloepfer aff., ¶ 6; see also R4, tab 4 at 1).

16. Drawing No. A8.201, LEVEL ONE COLUMN DETAILS, gives the dimensions for GWB and framing at column line 4/C, shows pipes within the column enclosure, and refers to above Sheet Note 2 (R4, tab 20). For this column, Detail 11 shows a triangular-shaped control joint to isolate the concrete from the slab (R4, tab 19; Kloepfer aff., ¶¶ 4, 5; *see also* R4, tab 3 at 1).

17. Prior to stud framing at the column enclosures at 10/E and 4/C, PPSI had installed the columns' top tracks with the goal that subsequent spray-on fire proofing would not be removed during track attachment. At the time, drain pipes had not been installed within the column area, and PPSI had not observed any conflicts. Later, when PPSI sought to complete framing at column lines 10/E and 4/C, 4" cast iron soil pipe, which by then had been installed at each location, interfered with the framing. The corner spaces between the column framing and the control joints were not large enough to accommodate the pipes. (Kloepfer aff. in each appeal, ¶¶ 5, 6, 9)

18. On 19 November 1996, Mortenson submitted RFI No. 2459, stating that the pipe intruded into the column framing at column 10/E, preventing placement of corner framing, and that there "should be no problem" extending the column framing about two inches to the west to bypass the piping; the ERO granted approval that day (R4, tab 12). The column size revision required relocation of the installed top track (Kloepfer aff., ¶ 9).

19. On 26 November 1996 Mortenson submitted RFI No. 2476, similarly seeking approval to adjust the column C/4 framing two and one-half inches south and one-half inch west to bypass the pipe; the ERO granted approval that day (R4, tab 11). The column size revision required relocation of the installed top track (Kloepfer aff., ¶ 9).

20. On 23 January 1997 Mortenson sought change orders of \$728 and \$698 in connection with RFIs No. 2459 and 2476, respectively, stating that the column framing changes had required "remobilization and rework of completed rough-in" (R4, tabs 7, 8). The ACO denied the requests (*id.*, tabs 5, 6); on 7 December 2000 Mortenson submitted claims for \$893 and \$862, incorporating the requests (*id.*, tabs 4, 3); and on 13 March 2001 the CO denied the claims (*id.*, tab 1).

21. Mr. Kloepfer contends in his affidavit that: Mortenson and PPSI did not control the column control joints' orientation; the GWB framing forced the soil pipe's location; and no amount of coordination could have prevented the conflict, because a lack of space within the column framing area mandated the framing extension (Kloepfer affs., ¶ 10). Messrs. Kloepfer and Tate do not state, and there is no specific evidence, that, prior to PPSI's installation of the columns' top tracks, Mortenson or PPSI reviewed all pertinent contract drawings and attempted to coordinate the framing with the pipe work.

DISCUSSION

Appellant reiterates Mr. Kloepfer's allegations (*see* finding 21) and asserts, as it has throughout its appeals, that the government cannot exculpate itself from liability for defective drawings by relying upon the contractor's duty to coordinate its work. The government contends that: increasing the GWB column enclosure size to avoid the conflicts with the pipes involved minor deviations covered by appellant's duty to coordinate the columns with the pipes and to adjust item placements to resolve any interferences; appellant's placement of concrete around the columns prior to pipe installation, not the orientation of the isolation joints in relation to the GWB framing, forced the pipes' location; and, had appellant coordinated that location prior to concrete placement, there would have been ample space to avoid the piping and framing conflict.

We addressed appellant's numerous obligations promptly to review contract drawings, notify the CO of discrepancies, and coordinate its work, in *Mortenson I, supra*, and noted that they were an integral part of its contract to construct the CMF project's complex IBS hospital facility (*see, e.g., Mortenson I*, findings 3, 4, 7-9, 16, and ASBCA No. 53105 discussion). For instance, the Contract Drawings clause requires appellant to check all drawings upon receipt, compare them, and verify figures before laying out the work (*see* finding 1, above). The specifications require it to coordinate the work of all trades to resolve potential interferences prior to work installation; verify the location of building components and items to be installed by all trades; verify dimensions in the field; and notify the CO of any discrepancy before performing any work (*see* findings 12-14). The contract drawings concerning column details depict pipes within the column enclosures and cite to a note that states in bold print: "PLUMBING PIPING HAS BEEN INDICATED FOR COORDINATION. COORDINATE WITH MECHANICAL PLANS" (findings 15, 16).

PPSI installed the columns' top tracks prior to stud framing at the column enclosures. The drain pipes had not yet been installed and PPSI had not observed any conflicts. Later, when it sought to complete the framing at the column lines, the pipes, which by then had been installed, interfered with the framing. The corner spaces between the column framing and the control joints were not large enough to accommodate the pipes. (Finding 17) Appellant acknowledged with regard to column 10/E that there "should be no problem" extending the framing about two inches to bypass the piping. It proposed a similar simple solution at column 4/C. (Findings 18, 19)

The circumstances of this appeal are unlike those in ASBCA No. 53146, in which we noted that a government design that does not provide adequate space to accommodate the work required to be accomplished within that space, regardless of any amount of coordination efforts by the contractor, is defective. *See Mortenson III, supra*, 05-1 BCA at 162,779. There, appellant had timely resolved spatial conflicts resulting from defective drawings through its coordination and re-design efforts and had placed

ductwork to eliminate interference with other construction. The appeal did not involve work that could have been avoided by timely recognition of clearance problems or conflicts, unlike ASBCA No. 53105, for example (*see Mortenson I*).

Here, appellant claims costs of “remobilization and rework of completed rough-in” (*see* finding 20). There is no evidence that it or PPSI reviewed all pertinent contract drawings or attempted to coordinate the framing work with the piping work prior to installation of the columns’ top tracks (finding 21). Thus, appellant has failed to prove that it complied with its contractual drawings review and coordination duties but that, nonetheless, a defect in the contract drawings that it could not have recognized with reasonable effort was responsible for its claimed costs. *See Mortenson I*.

DECISION

ASBCA Nos. 53405 and 53406 are denied.

ASBCA No. 53407 (Relocate Service Console at Room 1E152)

This appeal involves a \$621 claim for demobilization and remobilization costs of relocating a medical gas service console in hospital Room 1E152 to avoid electrical and mechanical conflicts.

FINDINGS OF FACT

22. TS 01440, CONTRACTOR QUALITY CONTROL, calls for IBS space coordination by the contractor, including engaging in a preparatory phase, prior to work, during which it is to review the specifications and plans. It requires that the contractor assign a qualified engineer or technician to supervise all activities within the IBS spaces, including “controlling the horizontal and vertical placement of items by all trades to insure accessibility and to eliminate space conflicts” (*see Mortenson I*, finding 7).

23. Drawings Nos. A2.214, A7.235, and Q2.214, all pertaining to FIRST LEVEL AREA ‘1D2’, depict the dimensioned location of medical gas console JSN A11151 in hospital Room 1E152 (R4, tab 3 at 1 and at ex. A).

24. After a framer employed by PPSI mobilized and had begun framing in Room 1E152, it was discovered that, due to mechanical and electrical conflicts, the medical gas service console had to be relocated. The framer demobilized. (*See Kloepfer aff.*, ¶ 5)

25. PPSI acknowledges that its initial layout is limited to determining a wall’s location, to allow installation of a top track and application of fireproofing. Thereafter,

bottom track and metal studs are installed, “and only then is the layout of stud spacing and associated conflicts discovered” (Kloepfer aff., ¶ 11).

26. Mortenson issued RFI No. 2530, dated 26 December 1996, asking for confirmation that it could move the service console one foot, four inches north to avoid the mechanical and electrical conflicts in Room 1E152. The ERO’s concurrence was dated 30 December 1996. (R4, tab 7; Kloepfer aff., ¶ 6)

27. By letter of 14 February 1997, Mortenson sought a \$568 change order for costs of remobilizing the framer to Room 1E152, laying out the new console location, and completing the framing. The ACO denied the request on 25 March 1997 on the ground that, if layout had been performed prior to the installation of framing in the room, there would have been no need for remobilization. On 7 December 2000, Mortenson submitted a \$621 claim, incorporating its change request. The CO denied it on 23 March 2001. (R4, tabs 5, 4, 3, 1, respectively)

28. Messrs. Kloepfer and Tate do not state, and there is no specific evidence, that, prior to commencing the framing layout, Mortenson or PPSI reviewed all contract drawings and specifications pertinent to Room 1E152 or attempted to coordinate the work of the various trades in the room.

DISCUSSION

Appellant contends that the government’s designer’s lack of coordination of dimensioned components in Room 1E152 caused the conflict and work stoppage at issue and that the government’s determination that appellant and PPSI did not timely perform drawings review and layout reflected its failure to understand the processes involved in laying out the metal stud work. The government asserts that appellant failed to comply with the drawings review and prompt notification of discrepancy provisions of the contract’s Specifications and Drawings for Construction and Contract Drawings clauses, and with TS 01440, and that the response to RFI No. 2530 was not a contract change but a minor clarification of work manifestly necessary to carry out the contract’s requirements (*see* findings 1, 25).

In addition to the contract’s other drawings review, notification, and coordination requirements, TS 01440 made appellant responsible for IBS space coordination, including review of the contract drawings prior to commencing work, and control of item placement to eliminate conflicts. There is no specific evidence that, prior to commencing the framing layout in Room 1E152, Mortenson or PPSI reviewed all pertinent contract drawings and specifications or attempted to coordinate the work in the room (finding 28). In fact, appellant acknowledges that the discrepancy in the plans regarding the layout of the service console “was not noticed until the stud spacing was being laid out after the door framing was installed” (app. br. at 80 *and see* finding 25).

The several contract provisions that require appellant to review applicable contract drawings and specifications before beginning work, and promptly to notify the CO of any discrepancies, are not subject to its or PPSI's particular work layout practices. Again, appellant has not proved that it complied with its contractual drawings review and coordination duties but that, nonetheless, a defect in the contract drawings that it could not have recognized with reasonable effort was responsible for its claimed costs. *See Mortenson I.*

DECISION

ASBCA No. 53407 is denied.

ASBCA No. 53408 (Revised Layout at Room 1D163)

This appeal involves appellant's \$1,201 claim for costs to remobilize after awaiting direction concerning a conflict in Room 1D163 between Door 1D163B and Relite 1D163-2.

FINDINGS OF FACT

29. Structural Drawing No. S0.02, GENERAL NOTES, "GENERAL," states in part, in bold print, that the contractor is to coordinate dimensions, openings and conditions with architectural drawings and trades "PRIOR TO CONSTRUCTION," and is to notify the CO of discrepancies (R4, tab 12, *and see Mortenson I*, finding 45).

30. The government acknowledges a conflict between architectural Drawing No. A2.213, FIRST LEVEL AREA '1D1', which shows Door 1D163B and Relite 1D163-2 in Room 1D163 separated by only six inches, and Detail 9, METAL STUD OPENING FRAMING, on Drawing No. S-6, STEEL STUD DETAILS, which requires double studs at the door and relite jambs (*see gov't. br. at 125, proposed finding 7*). Installation per the contract drawings was not possible due to a lack of space (Kloepfer aff., ¶ 6).

31. PPSI acknowledges that its initial layout is limited to a determination of a wall's location, which allows for top track installation and fireproofing. Next, doorframes are installed, "and only then is the layout of stud spacings and opening locations performed." (Kloepfer aff., ¶ 11)

32. PPSI had mobilized to Room 1D163 and performed frame layout before it discovered the spatial problem involving installation of Door 1D163B and Relite

1D163-2 (*see* R4, tab 5 at Scope Narrative; Kloepfer aff., ¶ 7; app. br. at 64, proposed finding b).

33. Mortenson submitted RFI No. 2532, dated 26 December 1996, stating that the relite needed to be moved five inches south to accommodate the double studs at the door and relite jambs. Its layout crews demobilized pending direction from the ERO, whose confirmation was dated 31 December 1996. (R4, tab 3 at 1, tab 7; Kloepfer aff., ¶ 5)

34. On 14 February 1997 Mortenson requested a \$1,079 change order for costs to revise frame layout and for the framer to remobilize and complete framing and welding at Door 1D163. The ACO denied the request on 1 April 1997 on the ground that, had appellant's drawings review and layout work been timely performed, prior to framing installation, there would have been no need to remobilize. On 7 December 2000 Mortenson submitted a \$1,202 claim, which the CO denied on 13 April 2001. (R4, tabs 5, 4, 3, 1, respectively)

35. Mortenson contends that the conflict at issue is not a type that is obvious at the time of bid, but the evidence of record is insufficient for such a finding. Mortenson has not backed its contention with any sworn statement, and Messrs. Kloepfer and Tate do not state, and there is no specific evidence, that, prior to commencing the framing, whether at the time of bid or later, Mortenson or PPSI reviewed all contract drawings and specifications pertinent to Room 1D163.

DISCUSSION

The government does not dispute the conflict between the architectural and structural steel stud drawings concerning Door 1D163B and Relite 1D163-2 in Room 1D163 (finding 30). Appellant, in turn, acknowledges that “the discrepancy in the plans and specifications regarding the layout of the relite was not noticed until the stud spacing was being laid out after the door framing was installed” (app. br. at 66; *see also* findings 31, 32). However, it again alleges that the determination that appellant and PPSI had failed timely to perform drawings review and layout reflected the ERO's failure to understand the processes involved in laying out the metal stud work, and it otherwise repeats the arguments it made in ASBCA No. 53407, as does the government.

In addition to the contract's other drawings review, coordination and notification provisions, structural Drawing No. S0.02 provides that the contractor is to coordinate dimensions, openings and conditions with architectural drawings and trades “PRIOR TO CONSTRUCTION,” and to notify the CO of discrepancies (finding 29). As we have noted, these contract requirements are not subject to appellant's or PPSI's particular layout practices. Moreover, while appellant contends that the conflict at issue would not be obvious at bid time, it has not supplied any specific evidence that, prior to commencing the framing layout in Room 1D163, whether at the time of bid or later, it or

PPSI reviewed all contract drawings and specifications pertinent to the room. (*See* finding 35)

Once more, appellant has failed to establish that it complied with its pre-work drawings review duties but that, nonetheless, a defect in the contract drawings that it could not have recognized with reasonable effort was responsible for its claimed costs. *See Mortenson I*

DECISION

ASBCA No. 53408 is denied.

SUMMARY

ASBCA Nos. 53393, 53405, 53406, 53407 and 53408 are denied.

Dated: 24 May 2005

CHERYL SCOTT ROME
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. 53393, 53405, 53406, 53407, 53408, Appeals of M.A. Mortenson Company, rendered in conformance with the Board's Charter.

Dated:

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