ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --	)	
	)	
R.P. Richards, Inc.	)	ASBCA No. 52465
	)	
Under Contract No. N68711-94-C-1593	)	

APPEARANCE FOR THE APPELLANT: Mr. Daniel B. Clarke
Vice President

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.
Navy Chief Trial Attorney
Richard L. Spector, Esq.
Trial Attorney
Naval Facilities Engineering Command
San Bruno, CA

OPINION BY ADMINISTRATIVE JUDGE TING
ON THE GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT

This is an appeal from a contracting officer's (CO) decision denying R.P. Richards, Inc.'s (Richards) request for a $9,821 equitable adjustment for being required to install a 3-inch main drain for the fire sprinkler system in the Control Tower at the Marine Corps Air Station, Maramar, San Diego, California. The Government moved for summary judgment. Richards, on behalf of its subcontractor, Pacific Rim Fire Protection, Inc. (Pacific Rim), opposed the motion.

FINDINGS OF FACT

1. Contract No. N68711-94-C-1593 was awarded to Richards on 10 December 1996. It required the alteration of, and new construction work on, two existing aircraft maintenance hangers, and the construction of a classified shredder building and a Control Tower. (R4, tab 1)

2. The contract incorporated by reference the FAR 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 1984) clause which provides in part:

> (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements . . . . Approval by the Contracting Officer shall

> not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.
>
> (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification . . . .

(Enclosure to Navy counsel letter of 29 June 2001)

3. SECTION 15330 of the specification pertains to "FIRE EXTINGUISHING SPRINKLER SYSTEMS (WET PIPE)." Paragraph 1.1, "REFERENCES," provides that "[t]he publications listed below form a part of this specification to the extent referenced." Among the National Fire Protection Association (NFPA) standards referenced are: NFPA 13, "(1994) INSTALLATION OF SPRINKLER SYSTEMS," and NFPA 14, "(1995) INSTALLATION OF STANDPIPE SYSTEMS." (R4, tab 2)

4. Paragraph 1.2 of SECTION 15330, "SYSTEM DESCRIPTION," requires the contractor to:

> Design and provide new and modify existing automatic wet pipe fire extinguishing sprinkler systems, combination standpipe and sprinkler system for complete fire protection coverage throughout the buildings and control tower *as indicated*. . . . (emphasis added)

Paragraph 1.3 of SECTION 15330, "SPRINKLER SYSTEM DESIGN," requires the contractor to:

> Design automatic wet pipe fire extinguishing sprinkler systems and combination standpipe and sprinkler system in accordance with the required and advisory provisions of NFPA 13, NFPA 14, and NFPA 75, *except as modified herein*, by hydraulic calculations for uniform distribution of water over the design area. . . . (emphasis added)

(R4, tab 2)

5. NAVFAC Drawing No. 8070014, "FIRE PROTECTION PLANS FIRST THROUGH FOURTH FLOOR" for the Control Tower, marked the drain with the note: "2 1/2" HOSE GATE VALVE W/ CHAIN AND CAP SEE NOTE 5 (TYP)." Note 5 states:

> PROVIDE PRESSURE REGULATING VALVES[1] ON HOSE CONNECTIONS THAT EXCEED 100 PSI IN ACCORDANCE WITH NFPA 14.

(R4, tab 3) In short, the contract drawing requires 2 1/2" hose connections and Note 5 of the contract drawing requires Pressure Regulating Valves or PRVs on hose connections that exceed 100 psi.

6. NFPA 14, "Standard for the Installation of Standpipe and Hose Systems, 1996 Edition,"[2] provides:

> 5-11 Drains and Test Riser.
>
> 5-11.1 A permanently installed 3-in. (76-mm) drain riser shall be provided adjacent to each standpipe equipped with pressure regulating devices to facilitate tests of each device. The riser shall be equipped with a 3-in. x 2 1/2-in. (76-mm x 63.5 mm) tee . . . .

(App. Opposition, ex. 3 at 6/6) Thus, under NFPA 14, ¶ 5-11.1, a 3-inch drain riser is required for each standpipe whenever it is equipped with PRVs.

7. Paragraph 1.4, "SUBMITTALS," of SECTION 15330 requires the contractor to:

> Submit the following in accordance with Section 01300, "Submittals."

This paragraph further provides that the Naval Facilities Engineering Command (NAVFAC) Fire Protection Engineer "will review and approve all submittals in this section requiring Government approval." Among the submittals required was:

> 1.4.1m. Pressure reducing valves for standpipe outlets exceeding 100 psi pressure.

(R4, tab 2) This submittal requirement implements the requirement of Note 5 of NAVFAC Drawing No. 8070014.

8. Paragraph 1.3.9c. of SECTION 01300, "SUBMITTALS," provides:

> Submittals marked "approved as noted" or "approved except as noted: resubmission not required" authorize the Contractor to proceed with the work as noted provided the Contractor takes no exception to the notations.

(Gov't response, R4 supp., tab 21)

9. On 13 October 1997, Richards submitted to the Resident Officer in Charge of Construction (ROICC) its automatic wet pipe fire sprinkler system submittal for approval. The standpipe schematic submitted shows that Richards planned to install "1" MAIN DRAIN" and that it planned to "(USE PRESSURE REDUCING) OVER 100 psi." (R4, tab 4)

10. On 13 November 1997, the ROICC "APPROVED WITH CORRECTIONS NOTED" Richards' submittal with the notation "SEE ATTACHED MEMO." The attached memorandum, dated 8 November 1997, was written by Donald Castor (Castor), the Government's fire protection engineering technician, who reviewed the submittal. It stated, in part:

> 1. As requested by reference (a) enclosure (1) was reviewed and is returned (3 copies) conditionally approved with the following comments:
>
> * * * *
>
> (e) provide a cut sheet for the pressure reducing valves for the standpipe connection of 100 PSI or greater as required by contract specification 15330 1.4.1 (m). Floors 1 through 4.
>
> 2. Verification that these comments have been adhered to will be made at the final acceptance test and shall be shown on the as built drawings when applicable. Submit item (e) for approval. . . .

(R4, tab 4) The Government's conditional approval did not reject or otherwise comment on the 1" main drain Richards planned to install. Castor acknowledged that he "overlooked the notation that the drain was shown as 1-inch," and that he had made a mistake in not taking exception to the 1-inch drain (Gov't mot., declaration of Castor dated 21 September 2000 at ¶ 26).

11. By letter dated 2 January 1998 to Richards, the Government forwarded its memorandum which documented the results of an inspection of the fire sprinkler for the Control Tower conducted on 16 December 1997. Among the deficiencies noted in the inspection report was one which stated that Richards must "[i]ncrease the size of the test and drain piping from the 6th floor to the 1st floor from 1 inch to 3 inch as required by NFPA 14 5-11.1." (underscoring in original) (R4, tab 5)

12. In reply to the Government's 2 January 1998 letter, Richards' subcontractor, Pacific Rim, made the following points by letter dated 21 January 1998:

> I. Per NFPA 14, par. 3-3.1, the system is a Class I for use by fire departments by virtue of the 2 1/2" hose valve designation on the plans.
>
> II. Per NFPA 14 par. 5-8.1 & 5-8.2, maximum pressure are addressed by who is to use the hose valve, i.e., if occupant, the 1 1/2" size maximum pressure 100 psi or fire departments 175 psi.
>
> III. Plans and specs do not reflect the use of 1 1/2" hose valves and is submitted, along with our original product submittal for 2 1/2" hose valves-non-regulated would not require pressure regulated valves, hence NFPA 14 par. 5-11 drain & test riser is not applicable. Therefore, not installed and not specified.
>
> IV. 2 1/2" pressure regulated hose, however, was installed at owners [sic] request, the test & drain was not requested.
>
> V. Additionally, 8NOV97 plan check letter requested the regulated valves for floors one and four only again without comment or request for test and drain extending to 6th floor.

(R4, tab 6)

13. While the 21 January 1998 letter is not completely clear, we understand Pacific Rim to be contending that by virtue of the fact the contract drawing specified a 2 1/2 inch hose valve, the Government had specified a Class I standpipe system. We understand Pacific Rim to be contending that the maximum pressure for hose connections specified in NFPA 14, ¶¶ 5-8.1 and 5-8.2 depends on whether the occupant or the fire department was to use the hose valve. We understand Pacific Rim to be contending that the contract documents did not require 1 1/2" hose valves, and that it installed the 2 1/2" pressure regulated hose because the Government so required in the contract drawing, which, however, did not require test drains as per NFPA 14, ¶ 5-11.1. We also understand Pacific

Rim to be contending that the Government's 8 November 1997 memorandum required regulated valves for floors one and four only, and not to require test drains to extend to the 6th floor. Except with respect to whether a 3-inch test drain was required to be installed, the Government does not appear to disagree with Pacific Rim's contentions.

14. NFPA 14, ¶¶ 5-8.1 and 5-8.2 provide:

> 5-8.1 Where the residual pressure at a 1 1/2-in. (38.1-mm) outlet on a hose connection available for occupant use exceeds 100 psi (6.9 bars), an approved pressure regulating device shall be provided to limit the residual pressure at the flow required by Section 5-9 to 100 psi (6.9 bars).
>
> 5-8.2 Where the static pressure at a hose connection exceeds 175 psi (12.1 bars), an approved pressure regulating device shall be provided to limit static and residual pressures at the outlet of the hose connection to 100 psi (6.9 bars) for 1 1/2-in (38.1-mm) hose connections available for occupant use and 175 psi (12.1 bars) for other hose connections. The pressure on the inlet side of the pressure regulating device shall not exceed the device's rated working pressure.

(App. opposition, ex. 3)

15. The contract drawing in this case modified NFPA 14, ¶ 5-8.2 to provide in essence that where the static pressure at a hose connection exceeds *100 psi*, an approved pressure regulating device shall be provided to limit static and residual pressures at the outlet of the hose connection to 100 psi for *2 1/2-in*. hose connections.

16. NFPA 14, ¶ 3-3.1 "Class I Systems," provides:

> A Class I standpipe system shall provide 2 1/2-in. (63.5-mm) hose connections to supply water for use by fire departments and those trained in handling heavy fire streams.

(App. opposition, ex. 3) Since the contract drawing requires 2 1/2" hose connections, the contract requires a Class I standpipe system for use by fire departments.

17. A memorandum dated 27 January 1998, evidently prepared by Castor, addressed the issues raised in Pacific Rim's 21 January 1998 letter. While not disagreeing that NFPA ¶¶ 5-8.1 and 5-8.2 addressed "pressures available at hose stations dependent on occupant use of the hose connections," the memorandum said that what the paragraphs addressed was "not germane." The memorandum went on to explain:

> 2. The contract drawings call for pressure regulating valves where the pressures exceeds 100 psi. Contract specification 15330 1.4.1 calls for a submittal for the pressure regulating valves.
>
> 3. Contract specification 15330 1.3 states to install a combination standpipe sprinkler riser in accordance with NFPA 13, 14 and 75 except as modified herein. Contract modifications are to provide pressure reducing valves for the standpipe where pressures exceed 100 psi. The reasoning behind this modification is that the fire department is using 1 1/2 inch wyes on the 2 1/2 inch hose connections for their attack lines and do not want pressures in excess of 100 psi to those lines. . . .
>
> 4. NFPA 14 paragraph 5-11.1 requires that standpipes with pressure regulating valves have a permanent 3 inch drain with a 3 by 2 1/2 tee equipped with an internal threaded swivel fitting and plug on at least every other floor for testing purposes. The system was to be installed per code and no special request for test and drains is required.

(R4, tab 7) NAVFAC forwarded this memorandum to Richards by letter dated 28 January 1998, and said "if you disagree with any aspect of the contents, please notify our office" (R4, tab 8).

18. Richards' 3 February 1998 letter took the position that "[n]either contract drawings or approved submittal drawings reflect the modifications required. If SWDiv [NAVFAC] considered this an issue, it should have been addressed at submittal review, not at the eleventh hour of system completion and testing." Richards suggested that the Government involve "a third party fire protection engineer" to resolve the dispute. (R4, tab 9)

19. As indicated in a 5 February 1998 memorandum, on 4 February 1998, a discussion took place between Castor and NAVFAC Senior Fire Protection Engineer Dinesh Patel. The memorandum reflects the following determination:

> 2. Mr. Patel concurred with the findings stated in reference (c) [Castor memorandum of 27 January 1998].
>
> > (a) Pressure reducing valves are required at the floors where the pressures exceed 100 PSI.

> (b) A three inch drain with a 3 by 2 1/2 tee equipped with an internal threaded swivel fitting and plug on at least every other floor is required for testing and maintenance of the pressure regulating valves per code and is required to be installed per contract. If pressure regulating valves are installed on floors where the pressure do not exceed 100 psi the test drain is still required for testing and maintenance.

(R4, tab 10) The Government forwarded its 5 February 1998 memorandum to Richards by letter of the same date. The letter instructed Richards to "[p]lease proceed with the required work." (R4, tab 11)

20. Richards' 17 February 1998 letter notified the ROICC that it would not proceed with the system revision requested because "the system [was] installed per approved submittal drawings." Richards proposed that the parties resolve their dispute by a third-party Fire Protection Engineer or a NFPA representative. It proposed that "[i]f they agree with SWDiv, RPR will make all alterations at no cost and pay for the representative." Richards asked the Government to consider the following points before entering into an agreement: (1) Note 5 would direct the designer to NFPA 14, ¶ 5.8 which called for "pressure regulating devices @ 100 PSI for 1 1/2" hose outlets, and a device on 2 1/2" only when pressure exceeds 175 PSI." "Use of a pressure regulator on 2 1/2" connections @ 100 PSI would therefore be a singular deviation from NFPA requirements. It was not, and is not, a basis for changing drain requirements," (2) PRVs were not submitted because "PacRim submitted per Part 2 of the specs, and these valves are not addressed there, only cited at 1.4.1.m.," and (3) "A 1" main drain was clearly indicated on the submittal drawings, and no exception was taken by SWDiv review to this drain sizing." (R4, tab 12)

21. The CO's 18 March 1998 letter responded as follows:

> . . . . you are hereby directed to proceed with the removal of the 1" drain line and proceed with the installation of the 3" drain line in accordance with the ROICC Miramar letter dated 5 February 1988. Since Southwest Division is the authority having jurisdiction over this facility, it would not be appropriate to have a third party review. Therefore, your request for a third party review is denied. Failure to proceed as directed could be construed as a breach of the contract.

(R4, tab 13)

22. Richards subsequently performed as directed. Uncertain what exactly the Government required it to do, Richards forwarded by letter dated 14 April 1998 a sketch prepared by Pacific Rim as its "best guess" of what the Government wanted. (R4, tabs 14, 17)

23. In designing the project, Pacific Rim was required to perform calculations to determine the static pressure at the valves on the various floors. Those calculations resulted in a pressure exceeding 100 psi at connections on floors one through seven. Pacific Rim's calculation shows that under "flowing conditions," the "residual" pressure for the first through the 4th floors only exceeded 100 psi. Floors five through seven were less than 100 psi. (Gov't mot., declaration of Castor dated 21 September 2000 at ¶ 20; R4, tab 17)

24. Castor's declaration explained why PRVs were required for floor one through four only as opposed to floors one through six:

> 21. As a concession to Pacific Rim, I changed the requirement for PRVs from static pressure to residual. Thus, PRVs were only required on floors 1 to 4. In general, Pacific Rim was looking for relief from the requirement to provide the required 3-inch drains. In response, I made an engineering judgment to use the residual pressures to determine the need for pressure reducing valves. Because of this, . . . the valves and associated 3-inch drains were only required on these floors.

(Gov't mot., Castor declaration of 21 September 2000 at ¶ 21) The Government fire protection engineering technician inspected Richard's installation prior to acceptance. He verified that the pressure on floors one through four was greater than 100 psi. On these floors, the PRVs had to be adjusted to lower the pressure to 100 psi. (Gov't mot., Castor declaration of 21 September 2000 at ¶ 22)

25. By letter dated 3 September 1998, Richards sought an equitable adjustment of $9,821 for being required to install a 3" main drain for the fire sprinkler system at the Control Tower (R4, tab 18). This request was rejected by the ROICC. By letter dated 16 September 1998, Richards requested a CO's final decision. Richards' request alleged that "MIL-HDBK-1008B[3] specifically prohibit[s] the use of a Class II standpipe system in buildings four stories or more in height." Richards alleged that the pressure reducing valves and associated drain required to be installed and in question are specifically for a Class II standpipe system. (R4, tab 19)

26. The CO denied Richard's claim by decision issued on 20 August 1999.[4] The CO summarized his reasons for denying the claim as follows:

> Richards was required to design and install a fire protection system in accordance with NFPA codes. The contract imposed an additional requirement that PRVs were to be installed on 2 1/2 lines where pressure exceeded 100 psi. No other exceptions or deviations from NFPA code were authorized. NFPA clearly requires 3" drain risers when PRVs are installed. Consequently, Richards's [sic] claim is found to be without merit and is hereby denied in its entirety.

The CO also took the position that even though the Government failed to catch the non-conforming 1" drain riser in Richards' submittal which was approved with corrections noted, Richards was not relieved from its responsibility under the contract (R4, tab 1 at 5).

27. Richards timely appealed the decision by notice dated 19 November 1999.

DECISION

Summary judgment is properly granted where there are no genuine disputed issues of material fact and the movant is entitled to judgment as a matter of law. *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390-92 (Fed. Cir. 1987). A material fact is one which may make a difference in the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Factual inferences are to be drawn in favor of the party opposing summary judgment. *United States v. Diebold*, 369 U.S. 654, 655 (1962). The nonmovant must "present definite, competent evidence to rebut the motion." *Mesnick v. General Electric Co.*, 950 F.2d 816, 822 (1st Cir. 1991), *cert. denied*, 504 U.S. 985 (1992).

We have carefully reviewed what Richards set forth as "DISPUTED FACTS" in its opposition to the Government's motion for summary judgment. While Richards argued how various contract and NFPA requirements should be interpreted, Richards has not presented any genuine issues of material fact which may affect the outcome of this appeal.

We interpret the contract and NFPA requirements as follows: The contract made NFPA 14 and other specified NFPAs a part of the specification and required Richards to design automatic wet pipe fire extinguishing sprinkler systems and combination standpipe and sprinkler system in accordance with NFPA 14 and others "except as modified herein." NFPA 14, ¶ 5.8.2 requires "Where the static pressure at hose connections exceeds 175 psi . . . an approved pressure regulating device shall be provided to limit static and residual pressures at the outlet of the hose connection to 100 psi . . . for 1 1/2-in . . . hose connections available . . . " (finding 14). In this case, the contract drawing in essence modified NFPA 14, ¶ 5-8.2 to provide where the static pressure at a hose connection exceeds *100 psi*, an approved pressure regulating device shall be provided to limit static and

residual pressures at the outlet of the hose connection to 100 psi for *2 1/2-in*. hose connections (finding 15). Since NFPA 14, ¶ 5-11.1 requires a 3" drain riser for each standpipe whenever it is equipped with PRVs (finding 6), we conclude that Richards is required to supply the 3" drains the Government demanded.

While acknowledging that "Use of a pressure regulator on 2 1/2" connections @ 100 PSI would . . . be a singular deviation from NFPA requirements," Richards' only argument is that such modification does not change the drain requirements (finding 20). Richards does not explain why it installed the 1" drains. On the other hand, NFPA 14, ¶ 5-11.1 clearly provides that "[a] permanently installed 3-in. (76-mm) drain riser shall be provided adjacent to each standpipe equipped with pressure regulating devices to facilitate tests of each device."

In justifying its installation, Richards contends that the 1" main drain was clearly indicated on the submittal drawing, and no exception was taken by the Government. The Government approved Richards' submittal with "correction noted." Although the Government conditionally approved the submittal subject to Richards providing a cut sheet for the PRVs for the standpipe connection of 100 psi or greater, it is undisputed that the Government made no comments about and took no exception to the 1" main drain shown on Richards' submittal.

On this issue, the SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 1984) clause provides "Approval by the Contracting Officer shall not relieve the Contractor . . . from responsibility for complying with the requirements of this contract" except with respect to separately described variations. The principle articulated in this clause has been upheld on numerous occasions and is by now well settled. *Price/CIRI Construction, J.V.*, ASBCA No. 37001, 89-2 BCA ¶ 21,697 at 109,089 ("The drawing clause specifically obligated appellant to provide all work specified by the terms of the contract regardless of the approval by the Government of an incomplete shop drawing."); *The Joseph Company, Inc.*, ENG BCA No. 5887, 92-3 BCA ¶ 25,075 at 124,991. Moreover, we note that Richards' submittal did not separately describe the 1" drain it planned to install instead of the 3" drain called for by NFPA 14, ¶ 5-11.1. In this regard, the Court of Claims has said that "[a] proposal for a change in a contract must be submitted in a sufficiently clear and formal way to put the other party on notice concerning it." *Vogt Brothers Mfg. Co. v. United States*, 160 Ct. Cl. 687, 714 (1963). We conclude that, as a matter of law, the Government is not foreclosed from requiring Richards to install the 3" main drain notwithstanding the fact that it approved without exception Richards' submittal showing a 1" main drain.

CONCLUSION

Because NFPA 14, ¶ 5-8.2 as modified by the contract drawing requires PRVs, and because NFPA ¶ 5-11.1 requires a 3" drain riser when the standpipe is equipped with PRVs, we hold that Richards is required to install 3" main drains.

Because approval of its submittal by the Government did not relieve Richards from complying with the requirements of the contract, we hold that Richards is required to replace the 1" main drain with the 3" main drain specified.

For the foregoing reasons, the Government motion is granted.

Dated: 30 July 2001

PETER D. TING
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

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

I concur

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

NOTES

[1] NFPA 14, ¶1-4 defines "Pressure Reducing Valve" as "[a] valve designed for the purpose of reducing the downstream water pressure under both flowing (residual) and nonflowing (static) conditions." The same paragraph defines "Pressure Regulating Devise" as "A devise designed for the purpose of reducing, regulating, controlling, or restricting water pressure. Examples include pressure reducing valves, pressure control valves, and pressure restricting devices." (App. opposition, ex. 3 at 1 of 6)

[2] The Government's motion for summary judgment attached as Exhibit 1, NFPA 14, 1993 Edition. Richard's opposition to the Government's motion included as Exhibit 3, NFPA 14, 1996 Edition. The Board's 5 June 2001 letter asked the parties to furnish a complete copy of NFPA 14, 1995 Edition. By letter dated 29 June 2001, Government counsel advised:

> Regarding NFPA Chapter 14, the 1996 edition was "approved" in November 1995. Prior to this, the effective edition was 1993. Regardless, the parties stipulate that the terminology is identical as it relates to the issue herein.

By letter dated 29 June 2001, Daniel B. Clarke, appellant's representative, signed Government counsel's 29 June 2001 letter stating that he "[a]greed to stipulation" (Pacific Rim letter of 14 July 2001).

[3] MIL-HDBK-1008B is a military handbook "for use of the Government and its AE only as standards for its design, which then goes out to the contractor. It is not to be used as a construction document" (Gov't response, declaration of Castor dated 3 January 2001 at ¶ 3.d). There is no dispute that MIL-HDBK-1008B was not a part of the contract.

[4] Because of a Postal Service problem, the decision was issued again on 6 October 1999.

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. 52465, Appeal of R.P. Richards, Inc., rendered in conformance with the Board's Charter.

Dated:

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