ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --	)	
	)	
Ryste & Ricas, Inc.	)	ASBCA No. 51841
	)	
Under Contract No. DADW35-97-C-0024	)	

APPEARANCE FOR THE APPELLANT: Robert L. Duecaster, Esq.
Manassas, VA

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA
Chief Trial Attorney
MAJ David Newsome, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE SCHEPERS

This timely appeal is from a termination for default of appellant's contract to repair and renovate a building at Ft. Belvoir, Virginia, during a 300-day period. At the time of the default termination, appellant had completed and received payment for approximately 50% of the contract work as increased by modifications. The Government did not carry its heavy burden that the termination was justified. Accordingly the appeal is sustained and the default termination converted to a termination for convenience.

FINDINGS OF FACT

1. On 29 September 1997, the Department of the Army, Directorate of Contracting, Construction Division, Ft. Belvoir, Virginia, awarded appellant Contract No. DADW35-97-C-0024 in the amount of $1,732,000 for the repair and renovation of Building 509 at Ft. Belvoir, Virginia. The work included electrical work, various mechanical restorations and concrete work. (R4, tabs 1, 4, 5) Building 509 is a 2-story building containing 36 living units (tr. 15).

2. The contract contained FAR 52.211-12 LIQUIDATED DAMAGES – CONSTRUCTION (APR 1984), FAR 52.243-4 CHANGES (AUG 1987), FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984), FAR 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984), and FAR 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984), the latter of which states:

> The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the

work diligently, and (c) complete the entire work ready for use not later than 300 days after contract award. The time stated for completion shall include cleanup of the premises.

(R4, tab 1)

3. The contract contained Section 01000, ADMINISTRATIVE REQUIREMENTS, which states in pertinent part:

> 1.1 The progress chart to be prepared by the Contractor pursuant to the Contract Clause entitled Schedules for Construction Contracts shall consist of a network analysis system as described below. In preparing this system, the scheduling of construction is the responsibility of the Contractor. The requirement for the system is included to assure adequate planning and execution of the work and to assist the Contracting Officer in appraising the reasonableness of the proposed schedule and evaluating progress of the work.
>
> . . . .
>
> 1.1.3.2 Detailed network activities shall include, in addition to construction activities, the submittal and approval of samples of materials and shop drawings, the procurement of critical materials and equipment, fabrication of special material and equipment and their installation and testing. All activities of the Government that affect progress, and contract required dates for completion of all or parts of the work will be shown. The activities which comprise the following separate building or features shall be separately identifiable by coding or use of subnetworks or both:
>
> . . . .
>
> 1.1.6 The Contractor shall submit at monthly intervals a report of the actual construction progress by updating the mathematical analyses. Entering of updating information into the mathematical analysis will be subject to the approval of the Contracting Officer.

(R4, tab 1)

4. Section 01030, JOB CONDITIONS, of the contract states in pertinent part:

20.2 CALCULATION OF ADVERSE WEATHER DAYS

The number of actual adverse weather days shall be calculated chronologically from the first to the last day of each month. Once the number of actual adverse weather days exceeds that anticipated, the Contracting Officer shall examine any subsequent adverse weather days to determine whether the Contractor is entitled to a time extension. Subsequent adverse weather days must prevent work for 50 percent or more of the Contractor's work day and delay work critical to the timely completion of the project. The Contracting Officer will convert any delays meeting the above requirements to calendar days and issue a modification in accordance with the contract clause "DEFAULT".

20.3 PROGRESS SCHEDULE

Contractor's progress schedule must reflect anticipated adverse weather days on all weather dependent activities.

(R4, tab 1)

5. Section 01030, JOB CONDITIONS, also states in pertinent part:

7.2 COMPLETION RATE

The Contractor shall obtain a digging permit, if excavation will be required, and all Phase I submittal approvals, prior to the start of Phase II. The Contractor shall perform all other work under the Phase II [sic].

7.3 PHASE COMPLETION

Phase I shall be completed for use not later than 45 calendar days from Notice to Proceed; complete Phase II ready for use not later than 300 days starting from the date of Notice to Proceed. The contractor shall perform all work, plant, labor, and materials required by the plans and specifications. The time stated for each phase shall include cleanup and final inspection of the work area. Phase II shall not commence until Phase I is completed.

(R4, tab 1)

6. Phase I required only submittals, and submittals included actual materials, methodology, progress schedules, and safety plans for the contract. Thus approved submittals were required prior to the start of construction. (Tr. 16)

7. Appellant subcontracted with American Stone, Inc. (ASI) to build and erect the pre-cast concrete, and also with Burckgad Electric, Paramount Mechanical Corporation, and Fredericksburg Glass (R4, tabs 12, 21, 53; tr. 21-22, 24).

8. On 23 October 1997 the CO issued the Notice to Proceed; appellant acknowledged receipt of the Notice to Proceed on 27 October 1997 (R4, tab 3).

9. Appellant's original schedule lists the project start date as 23 October 1997 and completion date as 18 August 1998[1]. The schedule divides the work into sections: (1) procurement; (2) new additions and site work; (3) 1st floor and basement (crawl space); and (4) 2nd floor. (R4, tab 4)

10. Appellant's first invoice dated 1 December 1997 totaled $34,640 for the bond, which the Government paid in full (R4, tab 5). On 1 December 1997 appellant was already behind its original schedule (tr. 24; R4, tabs 4-5).

11. On 9 December 1997 the CO notified appellant that "the Phase I completion period is 45 days and is not complete to date" (R4, tab 6).

12. On 7 January 1998 appellant submitted its second invoice for work from 1 December 1997 through 31 December 1997 totaling $206,290, which the Government paid in full (R4, tab 11).

13. On 2 February 1998 appellant submitted its third invoice for work from 31 December 1997 through 2 February 1998 for $94,410, which the Government paid in full. Appellant attached an updated progress schedule showing a completion date of 9 September 1998. (R4, tab 16)

14. On 17 February 1998 the parties signed bilateral Modification No. P00002 which was effective 13 February 1998 and increased the total contract amount by

---

[1] The clause Commencement, Prosecution, and Completion of Work conflicts with paragraph 7.3 above as to whether the contract completion date is 300 days after contract award or after the date of the Notice to Proceed. However the Government accepts the later date, or 19 August 1998 (not 18 August 1998). It is not necessary to decide whether the time period should run from the receipt of the Notice to Proceed rather than the date of the Notice to Proceed.

$21,221.40, the amount requested by two of appellant's cost proposals dated 23 January 1998 and 5 February 1998 for additional drywall demolition and repair of joists and flooring. In these cost proposals appellant did not request additional time. Modification No. P00002 did not include a time extension or any release language. (R4, tab 17) Appellant had completed the drywall work listed in Modification No. P00002 by 23 January 1998 when appellant submitted its request for payment of this work (tr. 43, 80).

15. On 18 February 1998 appellant forwarded a cost proposal for additional costs associated with Modification No. P00002. In that proposal appellant did not request additional time, but stated:

> [W]e have stopped this work, because we have exceeded the quantities as listed in Mod 2. We would like to restart this work as quickly as possible, and would appreciate any means to expedite this review process.

(R4, tab 28)

16. On 25 February 1998 appellant wrote the CO that it inadvertently failed to request a time extension of 33 days for Modification No. P00002 (R4, tab 18). Mr. Gerald Waldron, appellant's president, testified that removing a second layer of drywall was "a little harder and you've got a little more debris removal" and "the actual work . . . in that area had to stop until we did this work" (tr. 115).

17. On 9 March 1998 (letter misdated 9 December 1997), the CO wrote appellant that its request for a 33-day time extension "will not be granted at this time, but in the event that additional time is needed to complete the contract it will be considered and a modification prepared at that time" (tr. 47-48, 65; ex. G-15). The CO testified that before the contract was terminated he determined, based on the dollar amount of the contract versus the dollar amount of the modification, that appellant should have received a 4 to 5 day extension for Modification No. P00002 (tr. 44). After termination, the CO determined that there should have been a 5 to 10 day extension. In reaching these decisions, the CO did not consider the time period required to process the modification because the CO never stopped appellant from working while waiting for a modification. (Tr. 72-73, 79) There is no evidence the CO told appellant that they differed so greatly in the proper length of the time extension.

18. On 3 March 1998 appellant submitted its fourth invoice totaling $53,421.40, for work from 2 February 1998 through 3 March 1998; the Government paid appellant's fourth invoice in full (R4, tab 20).

19. Bilateral Modification No. P00003, executed and effective 19 March 1998, incorporated appellant's cost proposal submitted 18 February 1998, which requested a

price increase of $41,430. Modification No. P00003 increased the total price by $41,430 but gave no time extension and did not include any release language (R4, tab 28). Using the same analysis based on added costs as set out above (finding 17), the CO testified that after the termination he determined that appellant should have had an extension of "maybe ten days" due to Modification No. P00003 (tr. 74).

20. On 24 March 1998 appellant submitted its fifth invoice totaling $165,990 for work from 4 March 1998 through 24 March 1998; the Government paid appellant's fifth invoice in full. Appellant attached an updated progress schedule showing a contract completion date of 24 September 1998. (R4, tab 29)

21. On 17 April 1998 appellant submitted its sixth invoice for work from 25 March 1998 through 17 April 1998 totaling $98,500; the Government paid appellant's sixth invoice in full (R4, tab 35).

22. Bilateral Modification No. P00004, executed 5 May and effective 16 April 1998, was issued to provide labor, material and equipment to install brick vents and to remove an existing expansion tank. The modification incorporated appellant's proposals dated 20 February 1998 and 18 March 1998, and increased the contract price by $7,653. In those proposals appellant did not request time extensions. Modification No. P00004 did not include a time extension or any release language. (R4, tab 37) The CO made no analysis of whether appellant was entitled to any extension of time due to Modification No. P00004 (tr. 74).

23. On 14 May 1998 appellant submitted its seventh invoice totaling $32,631 for work from 18 April 1998 through 14 May 1998 which the Government paid in full (R4, tab 40).

24. Bilateral Modification No. P00005, signed 27 May 1998 and effective 18 May 1998, was issued to require alteration of the chiller enclosure. Modification No. P00005 increased the contract price by $10,566 and incorporated appellant's proposal dated 7 May 1998 which also requested a 24 calendar-day extension. The modification did not include a time extension or any release language. (R4, tab 43) The CO made no analysis whether appellant was entitled to an extension of time as a result of Modification No. P00005 (tr. 74-75).

25. On 28 May 1998 the CO notified appellant that it was delinquent on several Phase I and II submittals and directed appellant to submit all outstanding submittals by close of business 15 June 1998 (R4, tab 44).

26. On 10 June 1998 appellant forwarded to the CO an updated progress schedule showing a completion date of 20 October 1998, with some pages showing work taking

place up to 5 December 1998. The cover letter to the progress schedule stated it reflected "the approved change orders impact of time on the schedule." (R4, tab 45; *see also* tr. 124)

27. On 10 June 1998 the CO issued a cure notice to appellant for failure to adhere to the progress schedule and for being approximately two months behind schedule (R4, tab 46; tr. 51, 64).

28. On 11 June 1998 appellant submitted its eighth invoice totaling $130,114 for work from 18 April 1998 through 11 June 1998 for which the Government paid $117,103 ($130,114-$13,011 (10% retainage)). Appellant attached an updated progress schedule showing a completion date of 22 October 1998 (with no reference to work after that date). (R4, tab 48)

29. On 12 June 1998 appellant acknowledged receipt of the CO's 28 May 1998 letter regarding submittals. Appellant requested a time extension of four calendar days to complete the outstanding submittals, and stated: "We do have today, either being fed-exed [sic] or hand-delivered, Monday morning, six submittals as shown on the list. We expect to be able to submit the remainder of the data as requested on or before June 19, 1998." (R4, tab 47)

30. On 18 June 1998 appellant acknowledged receipt of the cure notice dated 10 June 1998, and requested a minimum extension of 60 days for the change orders issued to date and 45 days for rain delays from November 1997 through March 1998 (tr. 170; R4, tab 49). We note that 19 August 1998 plus 105 days results in a completion date of 2 December 1998. Concerning the rain delays, that letter states in part:

> Also, we are getting reports from the weather department basically showing that during the months from November through March there was an additional forty-five days of rain above and beyond the normal. We will be requesting a minimum of forty-five days, as we will try to only get the time that it was actually raining. You are aware that the impact of one day of rain can affect a job for two to three days.
>
> . . . .
>
> . . . We do not see a major problem in completing this project on schedule providing [sic] the time is allotted for the change orders and weather delays.

31. The CO told appellant in response to this letter "[t]hat we would visit time extensions when we got closer to the end of the project." After he received the 18 June

1998 letter, the CO was no longer considering terminating the contract for default. (Tr. 65) He did not tell appellant that he considered 105 days unreasonable (tr. 76).

32. Mr. Waldron testified he believed the 10 June 1998 schedule showing work continuing to 5 December 1998 was in effect since "[n]o one said anything otherwise" (tr. 127), although the CO did not state he had approved that schedule (tr. 124-27, 156-58). The CO testified he did not adopt the 10 June 1998 schedule, would do so only by modification, and did not understand that appellant thought he had adopted the schedule (tr. 191-92). The CO never advised appellant that the CO rejected the other updated progress schedules which were always included with the payment requests (tr. 51).

33. Bilateral Modification No. P00006, signed 15 July 1998 and effective 14 July 1998, incorporated appellant's proposal, dated 22 June 1998, to increase the total contract price by $1,495 for alteration of basement doors. That proposal included a request for a time extension of four days. No time extension and no release language were included in Modification No. P00006. (R4, tab 51)

34. On 22 July 1998 the CO wrote appellant twice: (1) asking that the remaining two Requests for Information for existing concrete-filled CMU walls and pre-cast ledger beam support detail, be submitted; and (2) requesting that by 1:00 P.M., 23 July 1998, appellant provide firm dates for start of the installation of the sprinkler system and for delivery and start of the installation of the windows (R4, tabs 55, 56).

35. On 23 July 1998 appellant responded that "the sprinkler system will begin in approximately ten days from today's date and the window installation will proceed on or about 10 August 1998" (R4, tab 57).

36. On 27 July 1998 appellant submitted its ninth invoice totaling $105,910 for work through 10 July 1998. Appellant's invoice included a credit for "Pre-cast stairs billed [but] not yet fabricated" in the amount of $10,000, for a net balance of $95,910. (R4, tab 58) As of 10 July, the date of the invoice, appellant had completed approximately 51% of the original contract work (tr. 178-79). The Government paid appellant $86,319 ($95,910 - $9,591 (10% retainage)).

37. On 4 August 1998 the CO issued a second cure notice which states (tr. 66; R4, tab 61):

> You are notified that the Government considers the failure of your subcontractor, American Stone, Inc. [responsible for the pre-cast concrete], to be on site due to non receipt of payment by you, a condition that is hampering progress. Other conditions contributing to this situation is [sic] your lack of response to our letter dated 22 July 1998

> requesting two (2) proposals and failure of your subcontractor, hired to install the sprinkler system, to be on site as of this date as stated in your letter of 23 July 1998. Therefore, unless these conditions listed above are cured within 10 days after receipt of this notice, the Government may terminate for default under the terms and conditions of the FAR 52.249-10 Default (Fixed Price Construction) clause of this contract.
>
> If you have any questions, please contact the undersigned at (703) 806-4489 or Nancy Lacaria at (703) 806-4445.

38. Unilateral Modification No. P00007, effective 6 August 1998, was issued 7 August 1998 and credited the Government $3,163 for Line Item 0003 (R4, tab 64). The CO made no analysis of whether appellant was entitled to extra time due to this modification (tr. 75).

39. The CO received numerous contacts from subcontractors indicating that appellant had not paid them for work performed (tr. 24, 27, 32, 39, 65-67), a fact that the CO passed on to appellant (tr. 36-37; exs. G-1, -2, -4, -5; R4, tab 52). Appellant did owe its subcontractors money on this and other contracts (tr. 149); appellant always intended to pay all its subcontractors (tr. 150). In some instances, the delay in payment was due to pending change orders primarily on other of appellant's Government contracts (tr. 149-50).

40. By FAX dated 7 August 1998 ASI notified appellant that upon the receipt of all outstanding monies due on its May and June invoices, ASI would reinitiate performance (R4, tab 65).

41. On 10 August 1998 appellant requested a 3-day extension to perform additional work to cut pipe penetrations through the concrete-filled block walls (R4, tab 66).

42. On 12 August 1998 appellant responded to the CO's second cure notice, stating in part:

> As per your letter, American Stone, Inc.'s check will be available for them today. This payment will bring into current status [sic] and, per their letter, upon receipt of this check, they would return to the job within the next two days.
>
> The Grinnell Sprinkler people will have people on the job next Tuesday, thereby moving that part of the job in the right direction.

> The two proposals you requested have gone in. The smaller one for $1400.00 will be typed today and will be faxed to you.

(R4, tab 67)

43. On 13 August 1998 appellant notified ASI that it had paid the outstanding balance of $23,500 to complete the payment of the "May 20, 1998 invoice (revised and approved June 11, 1998) . . . ." Appellant stated that it expected ASI on site on Monday, 17 August 1998. (R4, tab 68)

44. On 14 August 1998 the CO notified appellant at 10:30 a.m. that it was terminated for default under the Default Clause, for failure to perform in accordance with the terms and conditions of the contract (R4, tab 69; tr. 38). This date of termination was 295 days after the date of the Notice to Proceed (finding 9).

45. At the date of termination the Government had paid appellant approximately 50% of the total contract price (R4, tab 59; tr. 41-42).

46. At termination appellant had not started installation of the sprinkler system or erection of the pre-cast concrete, both major work items which were necessary before certain of the other work could begin (tr. 34-36).

47. Also at termination appellant had not submitted all of the required submittals (tr. 17-18). Throughout the life of the contract, appellant was delinquent on submittals (tr. 23-24).

48. At termination the CO had never given appellant any time extensions, even though, based upon the dollar amount of Modifications No. P00002 and P00003, he felt appellant was entitled to approximately 20 additional days. The CO felt appellant could not have completed the contract with a 20-day extension (tr. 55, 63, 72-73), rather that appellant would require 300 days more if the progress remained as in the past (tr. 55).

49. During contract performance and before issuing the termination, the CO consulted about appellant's progress on the contract with the following Government employees: director of installation support at Ft. Belvoir, project manager, architectural engineer, contract administrator, and project engineer/construction inspector. The gist of these conversations prior to termination was that there was "no way" this job could be completed in a timely manner and the only alternative was termination. The contract specialist made weekly reports to the CO which were based on her daily or weekly visits to the work site. The project engineer/construction inspector advised that the modifications to the contract did not entitle appellant to a 60-day extension. There is no termination memorandum or memoranda from the Government contract specialist or contract officer's representative. (Tr. 22, 40, 60-63, 68-72) There is no evidence the CO prepared a written

evaluation of the work, analyzed progress problems against a specified completion date, or considered whether the contract could have been substantially completed if appellant's subcontractors were present full time at the site for 25 days (20-day extension plus the 5 days remaining in the contract).

50. The modifications to the contract increased the contract price approximately $82,000 or 5% of the original contract price (exclusive of the credit in Modification No. P00007), a very small amount of the total contract price, in the opinion of the CO (tr. 47, 54).

51. Mr. Scott Farmer, appellant's on-site superintendent for the contract (tr. 86-87) and a Government witness, testified that in his opinion the work associated with all the modifications to the contract required additional time although not as much as 60 days (tr. 103-05). In Mr. Farmer's recollection the adverse weather never caused work stoppage or delay to the contract completion because the work was inside Building 509 (tr. 101-02). The roof on Building 509 was never removed so rain did not prevent appellant from work inside the building (tr. 54).

52. Mr. Farmer testified that appellant's subcontractors stated to him they were not performing because they were not being paid by appellant on the contract and on a prior contract with appellant (tr. 89-94, 109).

53. In Mr. Farmer's opinion, five to six more months were required for contract completion if the subcontractors were not at the site more than they had been. If the subcontractors worked more often than previously, Mr. Farmer's estimate would be different. (Tr. 107, 112) Mr. Farmer had no ill-will toward appellant and was paid everything appellant owed him (tr. 113).

54. In the opinion of Mr. Waldron, appellant's only witness, appellant needed a time extension of 120 to 150 days, or until mid-December, to complete the contract (tr. 176, 180-81). Mr. Waldron agreed that appellant could not have completed the work in 60 days (tr. 176). In Mr. Waldron's opinion, appellant could have completed the contract by December 1998 if: (1) ASI had started in mid-August 1998; (2) the subcontractors had been on the site continuously for the remainder of the contract; and (3) the CO had adopted the 10 June 1998 schedule allowing appellant until early or mid-December 1998 (tr. 143). Mr. Waldron was at the job approximately once each month (tr. 106). Mr. Waldron could not state which modifications caused delay (tr. 120-25).

55. Mr. Peter Walmsley, appellant's general manager (tr. 123), was at the contract site twice monthly (tr. 106). Mr. Walmsley was not called as a witness and on the day of trial, was "probably at work" (tr. 190).

DECISION

Termination for default is a drastic sanction that should be imposed upon a contractor only for good cause in the presence of solid evidence. *Lisbon Contractors, Inc. v. United States*, 828 F.2d 759, 765 (Fed. Cir. 1987), quoting *J. D. Hedin Construction Co. v. United States*, 408 F.2d 424, 431 (Ct. Cl. 1969). The Government has the burden to prove the termination for default was justified. *Id*. If the default is proven, the burden shifts to appellant to come forward with proof that its default was excused by circumstances beyond the control and without the fault or negligence of appellant or a subcontractor at any tier. *FDL Technologies, Inc.*, ASBCA No. 41515, 93-1 BCA ¶ 25,518 at 127,098.

A termination for default cannot be based on materially erroneous information as to appellant's responsibility for the delay, or materially erroneous information as to the labor and time required to complete the work. *L&H Construction Co., Inc.*, ASBCA No. 43833, 97-1 BCA ¶ 28,766 at 143,556. The Government owes the contractor no less than an assessment of all the relevant circumstances when it exercises its discretion under the default clause. *The Ryan Company*, ASBCA No. 48151, 00-2 BCA ¶ 31,094. The Government "must analyze progress problems against a specified completion date." *Technocratica*, ASBCA Nos. 44134 *et al.*, 94-2 BCA ¶ 26,606 at 132,370.

Before the default termination the CO did not grant, or even adequately consider whether time extensions were appropriate for four modifications (findings 17, 19, 24, 38), two of which he later determined justified an extension of a total of approximately twenty days (finding 48). Regarding one request by appellant for a time extension, the CO wrote appellant that the time extension would not be granted at that time, but "in the event that additional time is needed to complete the contract it will be considered and a modification prepared at that time" (finding 17). Again in response to a request for time extension, the CO stated: "[t]hat we would visit time extensions when we got closer to the end of the project" (finding 31). The CO did not tell appellant that their views differ greatly on the time justified for the extensions (findings 17, 31).

The second cure notice issued 4 August 1998 notified appellant that it must fulfill certain conditions within ten days (finding 37). On 12 August 1998 appellant gave a reasonable written reply of its actions taken in response to each of the conditions set out or referred to in that cure notice (finding 42). At 10:30 am on 14 August 1998 the CO notified appellant that it was terminated for default (finding 44).

In the CO's view completion of the contract required another 300 days, and appellant's on-site superintendent testified he felt completion of the contract required five

to six more months if the subcontractors' presence at the site was no greater than before (findings 48, 53). Appellant agreed that sixty days were insufficient and that an extension of 120 to 150 days, or until mid-December, was required to complete the contract (finding 54). The CO did consult with persons on site at the contract work, but there is no evidence the CO analyzed progress problems against a specified completion date, or considered whether the contract could have been substantially completed if appellant's subcontractors were present at the site full time for 25 days (20 day extension plus the 5 days remaining in the contract) (finding 49).

Two of the above points are of primary importance in this appeal: (1) appellant's reasonable response to the second cure notice; and (2) the CO's failure to set the final completion date for the contract or to tell appellant that their views of the proper length of the extensions of time differed greatly. In these circumstances, we hold that the CO abused his discretion by terminating the contract for default. *Darwin Construction Co., Inc. v. United States*, 811 F.2d 593, 598 (Fed. Cir. 1987).

The Government has not carried its heavy burden that the default termination was justified. Accordingly, the appeal is sustained and the termination for default converted into a termination for convenience.[2]

Dated: 29 May 2002

JEAN SCHEPERS
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

[2] We note the CO repeatedly stated that in determining whether the contractor was entitled to a time extension, and if so, the length of that extension, the methodology he used was to compare the dollar amount of a modification against the original dollar amount of the contract. In our view this methodology is decidedly flawed. The Changes clause provides that the contractor is entitled to a time extension based on the extent to which the change increases the time required for performance.

MARK N. STEMPLER
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. 51841, Appeal of Ryste & Ricas, Inc., rendered in conformance with the Board's Charter.

Dated:

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