

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
Singleton Contracting Corporation ) ASBCA No. 51692  
Under Contract No. DACA65-93-C-0168 )

APPEARANCE FOR THE APPELLANT: Mr. Wayne Singleton  
President

APPEARANCES FOR THE GOVERNMENT: COL Karl M. Ellcessor, III, JA  
Chief Trial Attorney  
CPT Anissa N. Parekh, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE MOED

This appeal relates to a construction-type contract, awarded to appellant, Singleton Contracting Corporation (SCC), for performance of building alterations. The contract was terminated for the convenience of the Government prior to issuance of notice to proceed (NTP). This is an appeal from the deemed denial of SCC's termination settlement claim and a concurrently submitted Request for Equitable Adjustment (REA) of the contract price to recover unabsorbed overhead costs resulting from the delay in issuance of the NTP. Both entitlement and quantum are to be decided.

FINDINGS OF FACT

1. This contract, which resulted from sealed bidding, was awarded to SCC on 29 September 1993 at the firm, fixed-price of \$74,293.00. The work consisted of: (a) construction of new ceramic tile showers, women's and men's toilets, and performance of other work at the U.S. Army Reserve Center (USARC), Charlottesville, VA (Contract Line Item (CLIN) 0001AA) (hereinafter the "Charlottesville work"); and (b) replacement of windows at the USARC, Richmond, VA (CLIN 0001AB) (hereinafter the "Richmond work"). Pursuant to the Commencement, Prosecution, and Completion of Work Clause of the contract, CLINs 0001AA and 0001AB were required to be completed no later than 90 and 60 days, respectively, after receipt of the NTP. (R4, tab 1)

2. The standard clauses contained in the contract included the following: FAR 52.212-12 SUSPENSION OF WORK (APR 1984); FAR 52.243-4 CHANGES (AUG 1987); and FAR 52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984). (R4, tab 1)

3. At the pre-construction conference for the contract, held on 2 November 1993, the Government informed SCC that the drawings for the Charlottesville work contained errors and would have to be revised (R4, tab 4 at 7; tr. 44). There is no evidence that SCC's performance was delayed or otherwise affected by those errors prior to that date. A revised drawing was transmitted to SCC on 16 December 1993 with a request for a price proposal and cost breakdown relating to listed and depicted proposed changes to the Charlottesville work (R4, tab 6). On 24 January 1994, the contracting officer informed SCC of additional changes to that work for which a price proposal and cost breakdown were requested (R4, tab 6 at 3). On 15 November 1993, SCC had been requested to submit a price proposal for the intended deletion of an item in the Richmond work scope which was duplicative of work to be performed under another contract (R4, tab 5).

4. As of 15 June 1994, SCC had not yet received the proposed specification changes and revised drawings for the Charlottesville work which SCC needed in order to prepare a price proposal for the contract modification. Likewise, the Government had not yet issued a contract modification deleting the duplicative item from the scope of the Richmond work. The absence of contract modifications promulgating the proposed changes and deletion of work indicates that these matters remained unresolved until the convenience termination ended the contract. SCC asserts that these matters delayed the issuance of the NTP. (R4, tab 11) No evidence to the contrary has been adduced. We, accordingly, find that assertion to be fact.

5. The FAR 52.212-12 SUSPENSION OF WORK (APR 1984) clause of the contract provides for adjustment of the contract price for "any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption" of all or any part of the contract work caused by an act or failure to act of the contracting officer as specified in the clause. The clause provides that "no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by . . . the fault or negligence of the Contractor." The Government contends that SCC contributed to the delay in the issuance of the NTP by failing to furnish proof of insurance coverages required by the contract (Gov't br. at 39).

6. Under Clause H.4 REQUIRED INSURANCE of the contract, SCC was obligated to "procure and maintain" specified types and amounts of insurance "during the entire period of performance under this contract." The clause also required SCC to furnish to the contracting officer a "certificate or written statement" of the required insurance "[p]rior to commencement of work hereunder." (R4, tab 1 at H-2) The contract also contained the FAR 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (SEP 1989) clause obligating SCC to "provide and maintain . . . the kinds and minimum amounts of insurance . . . required in the . . . contract" and "[b]efore commencing work under this contract, [to] certify to the Contracting Officer in writing that the required insurance has been obtained."

7. Section J (List of Attachments) of the contract contains Attachment D (Additional Contract Requirements). Paragraph 7 (Preconstruction Conference) of Attachment D provides, in part, as follows:

A Preconstruction Conference will be scheduled by the Contracting Officer after contract award and prior to commencement of work. . . . At that meeting, the Contractor is required to furnish a current Certificate of Insurance and a letter appointing a construction superintendent.

8. SCC failed to furnish the required insurance certificate at the preconstruction conference. SCC stated, at that time, that the certificate would be submitted “within the next few days” (R4, tab 4 at 7). This did not occur. In a letter dated 15 February 1994, the contracting officer informed SCC that the Government would not issue a NTP for the Richmond work without proof that SCC had obtained the required insurance coverages. SCC was requested to submit a “certified original copy of your insurance” prior to 22 February 1994. (R4, tab 7)

9. In a letter dated 19 February 1994, SCC’s president, Mr. Wayne Singleton, responded that SCC was not obligated under the contract to furnish proof of insurance until ten days after issuance of the NTP. The letter stated that Mr. Singleton would “take care of providing you with the required proof of insurance . . . after receipt of [the NTP] for the contract.” (R4, tab 8 at 2)

10. On 25 May 1994, SCC submitted Invoice No. 1 requesting payment of \$14,821.00 for performance and payment bond premiums and various materials purchased for the contract work (R4, tab 9). By letter dated 2 June 1994, the contracting officer refused payment of Invoice No. 1 “due to the fact that no [NTP] was ever issued and no proof of insurance was ever submitted” (R4, tab 10). In its response, dated 15 June 1994, SCC referred to its prior letter of 19 February 1994 (finding 9) and stated that “[a]t this stage in the contract, no proof of insurance is required and it definitely is not required as a pre-requisite [sic] for the submission and payment of an invoice for the cost of performance and payment bonds and stored materials” (R4, tab 11 at 1).<sup>1</sup>

11. At the hearing, Mr. Singleton testified that he had decided to postpone obtaining the required insurance coverage for 1994 until revised drawings and specifications had been issued (finding 3) and there was a foreseeable date for start of work. He “didn’t want to spend the money [for insurance premiums] until . . . necessary.” (Tr. 71-73)

12. Contrary, however, to his letters and testimony that proof of insurance would not be furnished until after issuance of the NTP (findings 9-11), Mr. Singleton testified that he had arranged to obtain the required insurance coverages, prior to the above letters, after receiving information that the contracting officer hoped to soon issue the NTP (tr. 78). He

stated that this action was taken on or about 4 February 1994 which was prior to the issuance of the above letters.

13. SCC has placed in the record a copy of a certificate of insurance issued by an insurance agency on behalf of SCC as named insured. That document, dated 23 February 1994, certified that policies of insurance relating to operations under the present contract had been issued to SCC for the coverages and amounts required by Clause H.4 REQUIRED INSURANCE for twelve months beginning on 14 and 16 February 1994. SCC has also furnished, for the record, copies of portions of the actual insurance policies for the required coverages. (R4, tab 37)

14. Mr. Singleton testified that the contracting officer had acknowledged receipt of the certificate during a conversation held during the period 18-31 May 1994. Mr. Singleton also stated that he subsequently sent copies of portions of the actual insurance policies setting forth the required coverages to the contracting officer (tr. 82, 290). The weight to be given to that testimony is diminished by Mr. Singleton's acknowledgment that he had no proof of the transmittal of those documents (tr. 300).

15. In addition, we have the testimony of Ms. Patsy L. Simmons who administered the present contract on behalf of the contracting officer for the entire performance period (R4, tab 44 at 11-12). At the hearing in ASBCA No. 48046, Ms. Simmons testified that proof of the required insurance was never received (R4, tab 44 at 29). All incoming mail concerning the contract was delivered to her mail box (R4, tab 44 at 12). Accordingly, she would have seen the insurance certificate dated 23 February 1994 had the same been delivered to her office. When shown that document at the hearing, she stated that "I never saw this" (R4, tab 44 at 57).

16. The weight to be given to Mr. Singleton's above testimony is also reduced by the circumstance that he did not report, or refer to, having transmitted these documents in replying to the contracting officer's letter of 2 June 1994 which was subsequent to those transmittals. That information would have been the obvious and complete answer to the contracting officer's complaint that SCC had not furnished proof of having obtained the required insurance coverages. (Finding 8) Indeed, had the insurance been obtained and proof provided, there would have been no reason for SCC to later argue that proof of insurance was not yet required by the contract (finding 10).

17. We consider that SCC's letters, written at the time of these events, stating its intent to defer providing insurance proof until issuance of the NTP provide a more reliable indication of what actually occurred than Mr. Singleton's assertions at the hearing almost six years later. On the foregoing record, we are unable to find that SCC furnished proof of insurance to the contracting officer as required by the contract.

#### Termination of the Contract

18. On 8 August 1994, without a NTP ever having been issued (R4, tab 44 at 29), the contract was terminated in whole for the convenience of the Government (R4, tab 12). SCC thereafter submitted a proposal for settlement of the termination consisting of three documents. One of these, titled "TERMINATION PROPOSAL," dated 7 August 1995, seeking reimbursement of \$4,706.00 for settlement costs (R4, tab 29), is not in dispute (joint stipulation, ¶ 20).

19. The second submittal, contained in SCC's letter of 7 August 1995 (R4, tab 27), was the REA seeking an increase of the contract price in the amount of \$101,927.00 for unabsorbed home office overhead resulting from alleged unreasonable delay on the part of the Government in issuing a NTP. The claimed amount was computed as set forth below pursuant to the *Eichleay* formula<sup>2</sup> (R4, tab 27 at 4). SCC's fiscal year (FY) was the calendar year.

(a) Home Office Overhead for Performance Period

(1) FY 1993 Segment

•Home office overhead - entire FY 1993 = \$200,174.00 (R4, tab 25)

•94 days of contract performance in 1993 (joint stipulation, ¶ 25)

$$\frac{94}{365} \times \$200,174.00 = \$51,552.00$$

(2) FY 1994 Segment

•Home Office overhead - entire FY 1994 = \$93,859.00 (R4, tab 25)

•220 days of contract performance in 1994 (joint stipulation, ¶ 25)

$$\frac{220}{365} \times \$93,859.00 = \$56,573.00$$

(3) Home Office Overhead - Entire Performance Period

$$\$51,552.00 + \$56,573.00 = \$108,125.00$$

(b) Home Office Overhead Allocated to this Contract

(1)  $\frac{\$24,722.00 \text{ (Billings under this contract)}}{\$24,722.00 \text{ (Total billings - performance period)}} = 100 \text{ percent}$

(2)  $\$108,125.00 \times 100 \text{ percent} = \$108,125.00$  (home office overhead allocated to this contract)

$$(3) \frac{\$108,125.00}{314 \text{ days (contract period)}} = \$344.35 \text{ (home office overhead @ per day)}$$

(c) Claim

$$\$344.35 \times 296 \text{ (claimed delay days)} = \$101,927.00$$

20. The third submittal was the “SETTLEMENT PROPOSAL,” dated 7 August 1995, in the amount of \$111,828.00 (R4, tab 28). The Settlement Proposal, which incorporated the REA, was duly certified by SCC on 30 June 1996 as a claim pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, as amended (R4, tab 33 at 6). That amount was comprised of the REA for \$101,927.00 and the following additional amounts:

Cost of Performance and Payment Bonds	\$ 1,857.00
Purchased Materials	14,274.00
Storage of Purchased Materials	709.00
Overhead Prior to Period of Delay	6,198.00
Profit (at 10 percent)	<u>1,684.00</u>
	24,722.00
Less: Previous Payments	<u>14,821.00</u>
Total	\$ 9,901.00

21. The amounts sought for performance and payment bonds and storage of purchased materials are not in dispute. The parties have agreed to the claimed profit rate of 10 percent (joint stipulation, ¶ 23). The amount of \$14,274.00 shown for purchased materials is incorrect. The correct amount, as claimed in, and paid under, Invoice No. 1 for these materials, was \$12,964.00. Previous payments to SCC required to be deducted in arriving at the net payment in settlement of the convenience termination<sup>3</sup> consisted of \$14,821.00, which was the amount of Invoice No. 1 (R4, tab 9).

22. The amount of \$6,198.00 sought for “Overhead Prior to Period of Delay” is in dispute. That amount is the product of multiplying the daily rate of \$344.35 by 18 days. That daily rate was that developed for the unabsorbed overhead claim in the REA. (Finding 19(b)(3)) The 18 days is the period from contract award (29 September 1993) until 17 October 1993 which SCC alleges was the beginning of the unreasonable delay in issuance of a NTP. That period is hereinafter referred to as the “pre-delay period.”

23. The Defense Contract Audit Agency (DCAA) conducted an audit and issued a report concerning the REA and SCC’s other claims (R4, tab 34). The primary issue addressed in the audit report, dated 16 September 1996, was the claim for unabsorbed overhead. The audit report accepted SCC’s application of the *Eichleay* formula for computing the total amount of home office overhead for the performance period (overhead pool) (finding 19(a)). The report, however, reduced the amount of the overhead pool from

\$108,125.00 claimed by SCC (finding 19(a)(3)) to \$88,343.00 by reason of unallowable and non-allocable costs. That amount is composed of \$39,997.00 for the FY 1993 segment of the contract period and \$48,346.00 for the FY 1994 segment. (R4, tab 34 at 10) The parties stipulated that \$88,343.00 constituted SCC's "allowable total fixed overhead expenses for the contract period" (joint stipulation, ¶ 24).

24. The audit report differed from the REA, however, as to the application of the *Eichleay* formula to the allocation of the overhead pool between this contract and others performed by SCC. The REA allocated the entire overhead pool to this contract on the basis that SCC "had no other work being performed during the contract period" (R4, tab 27 at 4). The record confirms that billings for this contract were the only ones made by SCC after the date of award of this contract (29 September 1993) (tr. 261; ex. A-10).

25. The audit report allocated the overhead pool pursuant to a variation of the *Eichleay* formula which employed a fraction, the numerator of which was SCC's revenue from this contract (*vice* billings under the contract) and the denominator of which was SCC's revenue from "total contract activity for fiscal years 1993 and 1994" (*vice* total billings during the contract period). On that basis, the audit report determined that this contract accounted for 13 percent of SCC's revenues during the contract period. When applied to the stipulated overhead pool (\$88,343.00), that rate resulted in the allocation of \$11,485.00 in home office overhead to this contract. (R4, tab 34 at 9)

26. All of the computations in the record as to recovery of overhead are based on the application of the *Eichleay* formula to the claim for unabsorbed overhead (findings 19, 23-25). Neither the Settlement Proposal nor the DCAA audit report contain a computation of the amount of overhead which would be allowable pursuant to the convenience termination, without regard to the claim for unabsorbed overhead. At the hearing, Mr. Samuel E. Cohn, who conducted the DCAA audit and participated in the preparation of the report, was questioned by the Board as to the normal method for arriving at overhead costs as part of a convenience termination settlement. At the time of the hearing, Mr. Cohn was employed as a technical program specialist at the DCAA Atlanta, GA regional office, responsible for providing technical advice to DCAA auditors serving in that region. (tr. 124-26, 128; R4, tab 34 at 15).

27. Mr. Cohn's testimony, which was not challenged by SCC, was that the normal method for arriving at overhead costs as part of a convenience termination settlement consisted of the following steps: (a) for each fiscal year of contract performance, develop a fraction composed of the total indirect costs of the contractor for that year ("indirect cost pool") as the numerator and the contractor's total direct costs for that year as the denominator; and (b) multiply the resulting fraction/percentage ("overhead rate") by the total direct costs of the contract in question resulting in the indirect cost allocated to the contract for that fiscal year (tr. 211-16). SCC, which presumably possessed information as to its own direct costs for work performed in FY 1993 and 1994, did not supply that

information for the record. SCC argued in its post-hearing brief that the amount of \$88,343.00, which was stipulated by the parties as the home office overhead for the performance period of this contract for the purposes of the unabsorbed overhead claim (finding 23), is also the amount of overhead payable pursuant to the convenience termination alone (app. reply br. 40-42). There is no evidence in the record showing that this is an appropriate method for determining normal overhead allowable as part of a convenience termination settlement.

28. In a letter to the contracting officer dated 28 February 1997, SCC demanded a contracting officer's decision with respect to the exceptions to the REA and the Settlement Proposal contained in the audit report (R4, tab 38). The requested decision had not been issued as of 5 August 1998. On that date, SCC gave written notice of appeal from the deemed denial of these claims (R4, tab 36).

### DECISION

Concurrently with its proposal for settlement of the convenience termination of the contract, SCC submitted its REA for increased costs resulting from the Government's failure to issue a NTP for the work. The increased costs consisted of unabsorbed overhead associated with that failure.

As a general rule, the termination for convenience of a fixed-price contract serves to change the mode of compensation under the contract from payment of the fixed price to payment based on reimbursement of allowable costs incurred for performance of the terminated work, as provided in the Termination for Convenience clause, subject to the limitations set forth in FAR 49.203 and 49.207. The change in mode of compensation encompasses claims for equitable adjustment of the contract price. Such claims are considered to have been "merged" into the pricing provisions of the termination for convenience clause. *Worsham Construction Company, Inc.*, ASBCA No. 25907, 85-2 BCA ¶ 18,016 at 90,369. As a consequence of the merger, "it is necessary to ascertain the extent to which [the contractor] incurred costs in the performance of the terminated contract but it is not relevant to assign such costs to changes, delays, or 'damages.'" *Seven Science Industries*, ASBCA No. 23337, 80-2 BCA ¶ 14,518 at 71,555.

Consideration of the merits of SCC's claim for unabsorbed overhead is necessary, however, as a result of the recent decision of the U.S. Court of Appeals for the Federal Circuit in *Nicon, Inc. v. United States*, 331 F.3d 878 (Fed. Cir. 2003). In *Nicon*, the Court held that costs of unabsorbed overhead were allocable on the basis of the *Eichleay* formula only where the delay had occurred after the start of contract performance. The formula was not applicable to allocation of such costs in the case of a delay in issuance of a NTP which was viewed as preceding contract performance. However, in the context of a convenience termination settlement, other methods might be available for allocating unabsorbed home office overhead costs associated with delay of issuance of a NTP. The Court stated that "[i]t



would be inappropriate in the termination for convenience setting, where fairness to the contractor is the touchstone, to . . . deny the contractor fair compensation for unabsorbed home office overhead.” *Nicon, Inc., supra* at 886-87. Recovery on an alternate allocation basis was conditioned, however, on the contractor meeting the eligibility requirements applicable to allocation on the basis of the *Eichleay* formula:

[A] contractor seeking unabsorbed overhead damages as part of its termination for convenience settlement must still meet certain requirements in order to be entitled to recover any of its unabsorbed overhead. The contractor must show that, before the government terminated the contract, there was a period of government-caused delay of uncertain duration. If the contractor itself played a role in the delay or if the delay was the fault of someone or something beyond the government’s control, then there is no entitlement to damages for unabsorbed overhead for that delay period. [Citation] Also, the contractor must show that it was on standby during the period of delay . . . .

*Nicon, Inc., supra* at 887.

The NTP was withheld in the present case for two reasons. The first of these related to defects and errors in the contract drawings for the Charlottesville work and duplicative work in the scope of the Richmond work. The Government wished to correct these defects and errors and accomplish the deletion on a bilateral, fully priced basis. It did not pursue these matters with SCC in a timely manner. In the meantime, issuance of the NTP was deferred. (Findings 3-4)

The issuance of the NTP was withheld also awaiting the receipt of proof required by the contract that SCC had obtained the insurance coverages specified in Clause H.4 REQUIRED INSURANCE and the FAR 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (SEP 1989) clause (findings 6, 8, 10). These clauses required that such proof be furnished before commencing work under the contract (finding 6). SCC interpreted that language as authorizing the proof to be submitted after issuance of the NTP (finding 9). That interpretation, however, is unreasonable given the express requirement of the contract, set forth in Attachment D (Additional Contract Requirements) that a “current Certificate of Insurance” be furnished to the Government at the pre-construction conference prior to commencement of work (finding 7).

The obvious purpose of the required insurance coverages was to protect the Government against third party claims associated with, or arising out of, the performance of the work. It was necessary that these coverages be in effect when the NTP was issued because the NTP was “an order by the Government to the contractor to get its equipment

and men on the job and begin performing the work called for under the contract.” *Abbett Electric Corp. v. United States*, 162 F. Supp. 772, 775 (Ct. Cl. 1958). Furnishing of the required proof of insurance coverages, was, thus, a condition precedent to the Government’s obligation to issue the NTP. SCC never furnished that proof with the consequence that the obligation to issue the NTP never arose.

The Government was responsible for the delay in issuance of the NTP pending the correction of defects in the contract documents. There is no evidence, however, that these defects delayed or otherwise affected SCC’s performance prior to disclosure of the defects at the pre-construction conference on 2 November 1993 (finding 3). The delay in issuance of the NTP due to the failure to furnish proof of insurance coverage was the responsibility of SCC. That delay also began on the date of the pre-construction conference when submittal of such proof was required by the contract. Both delays lasted until the contract was terminated inasmuch as both causes remained unresolved until that time. SCC is not entitled to recover for the delay for which the Government is responsible inasmuch as that delay was fully concurrent with the delay for which SSC was responsible. *Commerce International Company, Inc. v. United States*, 338 F.2d 81 (Ct. Cl. 1964). The concurrency of the delays also precludes recovery of unabsorbed overhead for that period as an allowable cost of the convenience termination. *Nicon, Inc., supra*.

Although not entitled to recover for unabsorbed overhead, SCC might have been entitled to an allowance for overhead on its direct costs by reason of the termination for convenience alone. SCC asserted, for the first time, in its post-hearing brief that it is entitled to recover the entire amount of SCC’s home office overhead for the performance period. That amount was computed under the *Eichleay* formula for the purposes of the unabsorbed overhead claim. There is no evidence in the record that this computation is appropriate also for arriving at the amount of overhead on direct costs normally allowable in the settlement of a convenience termination. There is undisputed evidence in the record, however, as to a method used for that purpose. (Finding 27) That method, however, cannot be applied here because SCC, which had the burden of proof as to allowable costs, *Maitland Bros. Co.*, ASBCA No. 43088, 93-3 BCA ¶ 26,007 at 129,304, has not furnished the information in its possession which was needed for that computation (finding 27). The record precludes any allowance for overhead in the settlement of the convenience termination.

Based on the foregoing, SCC is entitled to the following amounts in settlement of the convenience termination of the contract:

Cost of Performance and Payment Bonds	\$ 1,857.00 (findings 20-21)
Purchased Materials	12,964.00 (finding 21)
Storage of Purchased Materials	\$ <u>709.00</u> (findings 20-21)
Subtotal	\$15,530.00
Profit (at 10 percent)	<u>1,553.00</u> (findings 20-21)

	\$17,083.00
Less: Previous Payments	<u>\$14,821.00</u> (finding 21)
Total Additional Amount Due	\$ 2,262.00

Conclusion

SCC is entitled to an additional payment of \$ 2,262.00 in settlement of the convenience termination of the contract plus interest on that amount pursuant to the CDA from the date of the contracting officer's receipt of SCC's CDA certification of the Settlement Proposal (finding 20). The appeal is sustained to that extent and otherwise denied.

Dated: 8 August 2003

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PENIEL MOED  
 Administrative Judge  
 Armed Services Board  
 of Contract Appeals

(Signatures continued)

I concur

I concur

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

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

NOTES

<sup>1</sup> SCC subsequently submitted a monetary claim for the amount of Invoice No. 1. An appeal from the deemed denial of that claim was thereafter docketed as ASBCA No. 48046. Prior to the hearing on 12 May 1995, the Government paid Invoice No. 1 in full in the amount of \$14,821.00. In addition, SCC was paid \$53.28 as Prompt Payment Act penalties. During the hearing of ASBCA No. 48046, the parties agreed

to settle that dispute in consideration of payment of \$825.00 to SCC. (R4, tab 24)  
The transcript of that hearing is in the record of the present appeal (R4, tab 44).

2

As set forth in *Capital Electric Co. v. United States*, 729 F.2d 743, 747 (Fed. Cir. 1984), the *Eichleay* formula consists of the following computations:

Step 1.

$$\frac{\text{Contract billings}}{\text{Total billings for contract period}} \times \text{Total (fixed) overhead} = \text{Fixed overhead allocable to contract}$$

Step 2.

$$\frac{\text{Fixed overhead allocable to contract}}{\text{Days of performance}} = \text{Daily contract fixed overhead rate}$$

Step 3.

$$\text{Daily fixed overhead rate} \times \text{number of delay days} = \text{Unabsorbed overhead amount}$$

3

Standard Form 1436 SETTLEMENT PROPOSAL (TOTAL COST BASIS), which was appropriate for use in the present case (FAR 49.206-2(b)(4)), identifies such payments as “advance, progress, and partial payments.”

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. 51692, Appeal of Singleton Contracting Corporation, rendered in conformance with the Board's Charter.

Dated:

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