

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
E. L. Hamm & Associates, Inc.) ASBCA Nos. 51838, 51864
)
Under Contract No. N62470-90-D-4455)

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OPINION BY ADMINISTRATIVE JUDGE JAMES

These appeals arise from the contracting officer's (CO) deemed denial in ASBCA No. 51838 of, and final decision in ASBCA No. 51864 denying, the E.L. Hamm & Associates, Inc.'s (Hamm) claims for alleged changed and added work under a contract to maintain Naval family housing in the Norfolk, VA, area. The Board has jurisdiction of these appeals under the Contract Disputes Act of 1978, 41 U.S.C. §§ 605(c)(5) and 607. After a 2-day hearing at Virginia Beach, VA, the parties submitted post-hearing and reply briefs. The Board is to decide entitlement only (tr. 14).

FINDINGS OF FACT

A. General Findings.

1. Based on its 15 March 1991 solicitation, on 14 October 1993 the Navy Public Works Center (PWC), Norfolk, VA, awarded contract No. N62470-90-D-4445 (the contract) to Hamm for a base year and four option years of maintenance and repair of family housing units and other real property (R4, tab 1 at 1, B-2, B-3, tab 2).

2. The solicitation cautioned offerors that the base year might be for a period of less than one year, in which event “the Government will reduce the individual line item quantities to reflect the work remaining in the contract term.” The contract as awarded set forth “prorated award quantities (10 months)” for the work items. (R4, tab 1 at B-3)

3. The contract included three line items (CLINs). CLIN 0001 was for firm fixed-price services at \$2,083,706.92, and CLINs 0002 and 0003 were for indefinite quantity (IQ) services estimated at \$2,857,549.11. (R4, tab 1 at 1, B-2)

4. The three CLINs required work at seven housing areas on the Norfolk Naval Base, and at the Willoughby, Hewitt Farms, Carper and Norfolk Navy Welcome Center housing areas from 8 to 26 miles from the Norfolk Naval Base (R4, tab 1 at C-3a).

5. The Standard Form 26, AWARD/CONTRACT, stated in Block 18: “This award consummates the contract which consists of . . . (a) the Government’s solicitation and your offer, and (b) this award/contract” (R4, tab 1 at 1).

6. The contract included § H.19 which provided in pertinent part:

52.216-10023, COMBINATION FIRM FIXED PRICE/
INDEFINITE QUANTITY CONTRACT (NAVFAC) (NOV
1990)

a. This is a combination firm fixed price/indefinite quantity contract for the supplies or services specified Work items for the firm fixed price portion are identified in the Schedule The fixed price quantities shown in the Schedule are considered to be accurate estimates for this contract period

(R4, tab 1 at H-7; underlining in original)

7. Due to a GAO protest, contract performance was suspended from 4 November 1993 to 1 April 1994 (R4, tabs 14-15). Bilateral Modification No. P00002 to the contract, executed 30 March 1994, changed the contract number to N62470-90-D-4455 and changed the base period to 1 April to 30 September 1994 (R4, tab 15 at 1).

8. By unilateral Modification No. P00007, on 30 September 1994 the CO exercised the Navy’s option to extend the contract’s term by one year, ending 30 September 1995 (R4, tab 20 at 1-2).

9. By unilateral Modification No. P00018, on 28 September 1995 the CO exercised the Navy's option to extend the contract's term by nine months, ending 30 June 1996 (R4, tab 31 at 1-2).

10. On 12 June 1997 Hamm submitted 17 claims to the CO (ASBCA 51970, amended complaint & answer, ¶¶ 13, 19). Among such claims were No. 8, for \$135,851.35, alleging that the Navy had not made the Willoughby trailer site available to Hamm, and No. 10, alleging that defective specifications required Hamm to perform added policing services in the amount of \$135,930.18, and added mowing services in the amount of \$23,088.49 (R4, tabs 106, 140 at exs. 80-81).

B. Further Findings on ASBCA No. 51864, Hamm Claim No. 8

11. The contract included the FAR 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989) clause which provided--

a. Government-furnished property [GFP].

(1) The Government shall deliver to the Contractor . . . the [GFP] described in the Schedule . . .

(2) [Such GFP] suitable for use . . . will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's . . . performance dates.

. . . .

(4) If [the GFP] is not delivered to the Contractor by the required time, the [CO] shall, upon the Contractor's timely written request . . . make an equitable adjustment . . . in accordance with paragraph h. of this clause [*viz.*, the procedures of the Changes clause].

(R4, tab 1 at N-74). The contract also included the FAR 52.245-4 GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984) clause, whose terms were essentially the same as those quoted above for the 52.245-2 clause (R4, tab 1 at N-78).

12. Attachment J-C2, "GOVERNMENT FURNISHED FACILITIES," both in the solicitation and in the resulting contract provided:

The Government will provide an Administration, Shop and Storage building for the Contractor to use during the term

of the contract. This building is located in the Camp Allen area [on the Norfolk Naval Base south of the north-south runway and adjacent to interstate I-564]. The Contractor may also utilize the concrete pad adjacent to Building CA-12. Any temporary facilities as well as any improvements, alterations, including minor changes to the facilities or grounds, is [sic] subject to review and approval by the [CO]. Building CA-12 will be made available to the Contractor 15 calendar days prior to start date of the contract The Government will also make available to the Contractor trailer sites at Willoughby and Carper Housing projects. Other space, if available, will be provided on a case by case basis. The Government, however, makes no promise of additional space Government shall make available trailer sites at Carper, Hewitt and Willoughby Housing areas.

Attachment J-C2 did not require Hamm to request the Government orally or in writing to make such trailer sites available. (R4, tab 1 at J-C2-1; ex. A-11, dwg. 12,628P)

13. Hamm's pre-award technical proposal for the contract stated that:

HAMM . . . will also provide a satellite office trailer and portable storage trailer for Carper housing

. . . .

[W]e intend to staff a satellite maintenance and repair section at Carper housing The main work control office will be located at CA-12 . . . for the Sewell's Point area housing, and approximately 80% of the M&R craftsmen will work out of . . . CA-12

. . . .

The Sewell's Point M&R supervisor will be responsible for quality control monitoring of Sewell's Point area housing complexes including Willoughby and Hewitt Farms, and the Carper Housing M&R supervisor will be responsible for service call QC at Carper

(R4, tab 175 at 15-17)

14. In early November 1993, when performance was to begin, Hamm determined that it needed to use trailer sites at Carper, Hewitt and Willoughby housing areas to store materials and employee vehicles, so as to avoid driving back and forth for materials at building CA-12, which was eight miles from Willoughby (tr. 100-01, 176).

15. In 1994, when Hamm resumed work after the GAO protest, Hamm's owner, Edward Hamm, said that he spoke with Linda Hazzard, Navy contract administrator (tr. 149-50); Roy Marks, Hamm's project manager, said that he spoke with the Navy contract manager (R4, tab 140, ex. 91); and Robert Davis, Hamm's contract administrator, said that he spoke with Ken Sims, Navy supervisory contract administrator and CO (tr. 183-84; R4, tab 23), each requesting use of the Willoughby trailer site. Ms. Hazzard and Mr. Sims denied such statements in statements prepared in August 1997, but neither testified at the hearing.¹ The Navy's 14 March 1994 conference notes show that Hamm intended to man a trailer at Carper, but said nothing about the Willoughby trailer site. (R4, tab 177) We find that appellant's testimony and other evidence were more credible than the Government's evidence on this point.

16. The Navy provided the Carper and Hewitt trailer sites to Hamm (R4, tab 140, ex. 91 at 1). Since the Willoughby trailer site was being used by another contractor, the Navy did not provide the Willoughby site to Hamm (tr. 100-01). Rather than the Willoughby trailer site, the Navy allowed Hamm to use a vacant apartment that had no space to store materials and employees' vehicles (tr. 101, 175-76).

17. The lack of the Willoughby trailer site resulted in added travel time and diminished efficiency and productivity of Hamm's workers (tr. 101-02, 176).

18. Hamm's 30 July 1996 letter to the CO submitted a certified claim for \$65,132.69 for failure to make the Willoughby trailer site available, and the resulting added time to travel back and forth to building CA-12 (R4, tab 140, ex. 86).

19. Hamm's 12 June 1997 letter to the CO revised its claim for lack of the Willoughby trailer site, designated Claim No. 8, to \$135,851.35, based on 4,146.9 added manhours and 131,974 miles driven (R4, tab 106; tr. 102).

20. The CO's 28 September 1997 final decision denied Hamm's claim No. 8 on the bases that Hamm did not request the Navy to make such site available and Hamm's technical proposal for the contract "demonstrates that you never intended to use the available site at Willoughby" (R4, tab 115).

21. Hamm's 14 April 1998 letter to the CO revised the amount of Claim No. 8 to \$95,601.11 (R4, tab 140 at 55).

¹ By the time of the hearing, Mr. Sims was deceased.

DECISION ON ASBCA No. 51864

Hamm argues that (1) its offer anticipated using the Willoughby trailer site as a staging area, (2) the Navy never advised Hamm that the Willoughby site was available and knew that such site was being used by another contractor and (3) Hamm was not required to request that site, but in fact requested that site or some other suitable facility (app. br. at 53). Hamm concludes that it has proven entitlement to an equitable adjustment under the contract's Government Property clause.

The CO denied Hamm's claim on the bases that (a) Hamm's technical proposal did not propose use of the Willoughby trailer site, and (b) during the contract Hamm did not request orally or in writing a trailer site at the Willoughby housing area (finding 20). Respondent also argues that Hamm's technical proposal induced the Government to rely on the fact that the Willoughby trailer site was not required and its proof of damages resulting from lack of the Willoughby trailer site was "speculative" (Gov't br. at 62-63).

Hamm's proposal offered to provide a main work control office at building CA-12 on the Norfolk Naval Base and one satellite office at Carper housing, and stated that the Sewell's Point supervisor at building CA-12 was responsible for quality control of Sewell's Point, Willoughby and Hewitt Farms housing areas. Hamm did not propose a satellite office at Hewitt or Willoughby. (Finding 13) Nonetheless, prior to contract award, the Navy did not modify Attachment J-C2 to eliminate the Hewitt and Willoughby trailer sites as Government furnished facilities (finding 12), and after contract award the Navy provided Hamm with the trailer site at Hewitt (finding 16). Accordingly, respondent's arguments that Hamm's proposal induced the Navy to rely on the fact that the Willoughby trailer site was not required, and so estopped Hamm later from asserting such right, are not tenable.

As to respondent's second argument, Attachment J-C2 did not require Hamm, after contract award, to request the Government orally or in writing to make the Carper, Hewitt and Willoughby trailer sites available (finding 12). Attachment J-C2 specified that Building CA-12 was to be made available to Hamm 15 calendar days prior to the contract's start date, but did not state a specific date for the Government to make available the trailer sites at Carper, Hewitt and Willoughby housing areas (*id.*). When no specific time for delivery of GFP is set forth in the contract, the Government is obliged to deliver the GFP in sufficient time for it to be used in the ordinary and economical course of performance. *See Peter Kiewit Sons Co. v. United States*, 151 F. Supp. 726, 138 Ct. Cl. 668, 674-75 (1957). Consistent with such precedent, the GFP clause required the Government to furnish to Hamm the trailer sites at least by the time contract performance was to commence.

The FAR 52.245-2 GOVERNMENT PROPERTY clause, ¶ a.(4), required Hamm to provide a "timely written request" for an equitable adjustment if the specified GFP was not delivered to the contractor by the required time (finding 11). The Navy did not provide the

Willoughby trailer site to Hamm during contract performance (finding 16). In 1994 when performance resumed, Hamm’s owner, project manager and contract administrator each orally requested the Navy CO and others to furnish the Willoughby trailer site to Hamm (finding 15). Moreover, the undisputed fact that respondent provided Hamm a vacant apartment rather than the Willoughby trailer site (finding 16) is persuasive evidence that the CO knew that Hamm wanted to use the Willoughby trailer site. We conclude that respondent had timely notice of the lack of the Willoughby trailer site for Hamm’s use and that Hamm’s failure to submit its written claim until after completion of performance does not bar recovery. *See Oxwell, Inc.*, ASBCA No. 27523, 27524, 86-2 BCA ¶ 18,967 at 95,777 (when the Government’s officials well knew of a continuing lack of GFP, the purpose of the Government Property clause’s notice requirement was amply met).

Respondent’s argument that the Willoughby trailer site was available throughout contract performance (Gov’t br. at 61) is disingenuous. It was certainly true that a Willoughby trailer site was geographically and physically available during the Hamm contract, but it was made available to another contractor, not to Hamm (finding 16). Hamm’s proof of the harm caused by the lack of the Willoughby trailer site – added hours of travel time and added miles back and forth from Building CA-12 (finding 17) – was not speculative, and is sufficient to establish entitlement.

We sustain the appeal in ASBCA No. 51864.

C. Further Findings on ASBCA No. 51838, Hamm Claim No. 10

22. The contract’s § B, CLIN 0001 firm fixed-price work, had sub-line items (SLINs) which included the following pertinent grounds maintenance SLINs (omitting unit cost and prorated extended totals):

<u>Item No.</u>	<u>Supplies/Services</u>	<u>Unit</u>	<u>Prorated Award Quantities (10 months)</u>
0001BD	General mowing (per Clause C.11)	AC	3959
0001BE	Prestige mowing (per Clause C.11)	AC	178
. . . .			
0001BG	Policing of grounds (per Clause C.11)	AC	32856

“AC” meant acre. (R4, tab 1, § B at 5; tr. 93)

23. Section C.11 required: (a) general and prestige mowing for 32 weeks from April through October in the areas shown in PWC drawings 12,628 through 12,628R, and referencing “Attachment J-C17 for Historical Data”; and (b) daily policing of grounds for which lawn maintenance was required, plus all streets, sidewalks, playground areas, parking lots, gutters and alleys (R4, tab 1 at C-3a, -4, -48 to -50). Section C.1.3 listed 10 federal holidays, and § C.2j stated that the contractor’s regular working hours were Monday through Saturday except 10 federal holidays. These requirements produce 303 annual work days (365 days - 52 Sundays - 10 holidays).

24. SLINs 0001BD, -BE and -BG did not explicitly state the number of acres to be mowed weekly and policed daily (tr. 173). However, the acres to be (a) mowed can be derived from the originally solicited annual mowing quantities for SLIN 0001BD of 4,751 and for SLIN 0001BE of 213 by dividing their sum by 32, the specified number of weekly mowings, which yields 155.125 acres $(4,751 + 213 \div 32)$, and (b) policed can be derived from the annual quantity of 39,427 acres for SLIN 0001BG, divided by 303, the daily work requirement (finding 23), yielding 130.12 acres $(39,427 \div 303)$.

25. PWC drawings 12,628-12,628R and Attachment J-C17 did not state the number of acres for policing, but did state the following number of acres for lawn mowing:

<u>Housing Area</u>	<u>Acres/Dwgs</u>	<u>Acres/J-C17</u>
Willoughby	31	31
Carper	31.79	32
Hewitt Farms	19.87	19.87
Camp Allen	13	13
CINCLANT/AFSC	11.18	11.18
" prestige	4.04	6.76
Capehart	25.52	25.52
Torgerson	1.92	1.92
Ben Moreell	15	15
[TOTALS:	153.32	156.25]

(R4, tab 1 at J-C17-1, -2; ex. A-11; tr. 207-08)

26. Before bidding, Edward Hamm and Serge Drillock made a site visit for Hamm, but did not measure the mowing and policing acreages (tr. 141-42). We find that it was reasonable for Hamm not to re-measure the stated mowing acreages, but it was not reasonable to fail to measure or to question what additional policing acreage was required,

since the deductible 130.12 policing acres (finding 24) were *fewer* than the stated 153.32 or 156.25 mowing acres (finding 25), despite the contract provision that the policing area included the mowing area plus the specified additional areas of streets, sidewalks, etc. (finding 23).

27. Hamm's proposal offered to police 166.77 acres daily for 236 days per year. (The 39,427 annual policing acres divided by Hamm's proposed 166.77 acres is 236.4 days.) Hamm derived those 166.77 daily acres from the *mowing* acreages stated in Attachment J-C17 for each of the housing areas, except that Hamm used 25.52 acres for Ben Moreell rather than the 15 mowing acres stated in J-C17, a 10.52 acre discrepancy. (R4, tab 175 at 37) We find that Hamm's policing proposal included only the mowing acres, and no acres for "streets, sidewalks, playground areas, parking lots, gutters and alleys," required by § C.11. The record discloses no inquiry by Hamm to the CO about the discrepancy between the 130.12 daily policing acres (derivable by dividing the stated 39,427 annual policing acres by 303 days) and the 166.77 acres Hamm proposed.

28. On 14 April 1994 Hamm subcontracted with Trident Services for general and prestige mowing under the PWC prime contract (R4, tab 153 at 01939).

29. In 1995 Hamm discovered a discrepancy between the acreages for mowing and for policing services, which, according to Messrs. Hamm and Davis, was not evident at the time Hamm was "bidding," but became evident in light of subsequent information (tr. 98, 172-73, 181).

30. Hamm's 10 April 1995 letter to the CO stated that Hamm had analyzed the contract information and determined that the acreages for ground policing and raking included the lawn plus the areas for streets, sidewalks, playgrounds, parking lots, gutters and alleyways, but the § B acreage for policing and raking equaled only the lawn area,² and thus was "understated." Hamm requested a price modification to reflect the understated scope of policing and raking services. (R4, tab 55a; tr. 95-96, 172-73)

31. On 24 April 1995 Navy inspector Phil Jones wrote Hamm that since 1 April 1994 the actual acreage for CINCLANT/AFSC housing had differed from that specified, because a portion of such area was transferred for bachelor officers quarters (BOQ), whose tenants used a contractor named Diversified Contractors for ground maintenance. By Mr. Jones's calculation, the CINCLANT/AFSC area was reduced from 17.94 to 6.1 acres, composed of 3.1 acres (11.18 - 8.08) of general mowing, and 3.0 acres (6.76 - 3.76) of

² Hamm's statement that the policing and lawn areas were equal was erroneous, since the § B policing acreage based on 303 annual work days was about 26 acres *less* than the stated mowing acreage (finding 26). See also finding 34, where the same statement recurs.

prestige mowing. (R4, tab 150 at 14386, tab 166 at 1; tr. 281-86) Mr. Jones told Hamm that, for the period 1 April to 30 September 1994, the Navy would deduct \$5,483.378 for general mowing and \$3,774.286 for prestige mowing due to the foregoing 11.84 acre reduction for the BOQ (R4, tab 150 at 14386; tr. 287). On 11 May 1995 respondent deducted \$5,483.378 and \$3,774.286 from Hamm's invoice No. 12 for March 1995 (R4, tab 150 at 14370, 14373).

32. On 11 May 1995 Mr. Jones told Hamm that for the period 1 May to 3 June 1995 respondent would deduct \$979.174 for general mowing and \$672.194 for prestige mowing due to the foregoing CINCLANT/AFSC acreage reduction (R4, tab 166). On 7 July 1995 respondent deducted \$979.174 and \$672.194 from Hamm's invoice No. 14 for May 1995 (R4, tab 150 at 14698, 14706).

33. Based on our review of Hamm's invoice and payment record, we find that the Navy made deductions from Hamm's invoices due to the alleged CINCLANT/AFSC 11.84 acre BOQ reduction for 7 of the 27 months of contract performance (R4, tab 150). We further find that Hamm mowed the Ben Moreell area for the 27-month contract term (R4, tabs 169-72, 179 at 8).

34. Hamm's 30 July 1996 letter to the CO submitted a \$112,031.39 certified claim for 48.04 increased acres of policing work, alleging that the contract specified "exactly the same" areas for mowing and policing; thus, the policing area should be increased to account for the added area of sidewalks, parking lots, etc. (R4, tab 140, ex. 79; tr. 96-97).

35. At the end of 1996 or in early 1997, at Hamm's request, Serge Drillock, a professional engineer, reviewed the contract's general and prestige mowing and policing requirements, scaled PWC drawings 12,628 to 12,628R to determine their mowing areas, and checked some distances by tape measure or by a wheel calibrated to read distances within 2% accuracy. He calculated 160.84 acres of general mowing (of which 1.875 acres were within the BOQ area of CINCLANT/AFSC), 3.98 acres of prestige mowing (none of which was within the BOQ area), and 79.88 acres of policing additional to the mowing areas depicted on those PWC drawings, for totals of 164.82 mowing acres and 244.7 policing acres. His calculation of the mowing acres that he scaled and measured included 18.39 acres at Ben Moreell and 15.09 acres at CINCLANT/AFSC. (R4, tab 140, exs. 82-83, 85 at 27; ex. A-11; tr. 188-200) We credit his calculations, and find that the acreage used for deductions at CINCLANT/AFSC should have been 1.875 rather than 11.84.

36. Hamm's 12 June 1997 letters to the CO submitted certified claims of \$135,930.18 for additional policing work and \$23,088.49 for additional mowing, with revised calculations and take-off spread sheets for each claim. Hamm dropped its 10 April 1995 raking services claim element. (R4, tab 140 at exs. 80-83)

37. During contract performance, Hamm performed mowing and policing services by its own employees and by Trident (tr. 97-98, 173-74, 179, 232, 235, 246-47). Trident submitted no claim against Hamm for added mowing (tr. 149).

DECISION ON ASBCA No. 51838

Hamm argues that (1) the contract stated incorrect unit quantities for CLIN 0001 fixed-price mowing and policing, which caused Hamm to propose less work than it actually performed, (2) the discrepancy between the required mowing and policing acreages was a latent defect in the contract specifications, and (3) when a contractor is required to perform work not contemplated by its bid as a result of mistakes in Government specifications, it is entitled to added compensation for such work.

Respondent argues that (A) the discrepancy between the specified areas for mowing and for policing was obvious before award, and was not a latent defect; (B) Hamm performed 500.12 fewer acres of mowing than required during the entire contract performance period, *viz.*, 6.495 fewer acres per cutting (500.12 ÷ 77 mowings, including 32 in 1994, 32 in 1995, and 13 in 1996); (C) Mr. Drillock's calculation of the areas to be mowed was inaccurate because it included the Ben Moreell acreage and the 11.84 acres eliminated before 1 April 1994 from the CINCLANT/AFSC area; and (D) lawn mowing and some policing were performed by Trident, which made no claim against Hamm for added mowing or policing services.

Mowing. With respect to this claim element, different sections of the contract required 155.125, 153.32, or 156.25 acres to be mowed (findings 24-25). We accept the § B acreage, 155.125, as controlling. *See* FAR 15.406-1; *Fossitt Groundwork, Inc.*, ASBCA No. 45356, 96-1 BCA ¶ 28,096 at 140,244. In late 1996 or early 1997 Hamm measured and calculated 164.82 acres for mowing, composed of 160.84 general and 3.98 prestige mowing (finding 35). Therefore, Hamm has proven that it mowed 9.695 additional acres weekly (164.82 - 155.125), disregarding the adjustments at CINCLANT/AFSC.

We have found that from the outset on 1 April 1994, Hamm did not mow 164.82 acres, but rather mowed 1.875 fewer acres due to the elimination of the BOQ area of CINCLANT/AFSC, and that the Navy made deductions for what it calculated as an 11.84 acre reduction for that BOQ area (finding 31) for 7 of the 27 months of contract performance (finding 33), but which we have found actually was a 1.875-acre reduction (finding 35). We also have found that Hamm mowed the Ben Moreell housing area throughout the term of the contract (finding 33). We sustain this element of claim 10. The parties shall consider the actual BOQ acreage reduction and respondent's price reductions therefor in resolving quantum.

Policing. With respect to this element of claim 10, the contract did not explicitly state the number of acres required to be policed daily, but required Hamm to police the

areas for which lawn maintenance was required, plus all streets, sidewalks, playground areas, parking lots, gutters and alleys (findings 23-25). Hamm proposed to police 166.77 acres daily for 236 days per year, derived from the mowing acreages stated in Attachment J-C17, except for a 10.52 acre error, and did not include any acreage for the additional policing areas specified by contract § C.11 (finding 27). After the contract had been performed, Hamm scaled PWC drawings 12,628 to 12,628R, to which the contract specification referred (finding 23), and measured 79.88 acres in addition to the 164.82 mowing acres, for a total 244.7 acres to be policed (finding 35).

The 130.12 acres derivable from the contract's § B annual quantity of 39,427 acres divided by the 303 days required for policing (findings 23, 24) differed greatly from the 244.7 acres Hamm measured for policing (finding 35), and thus it is clear that the 39,427-acre annual policing quantity was erroneous. To come within the doctrine in *United States v. Spearin*, 248 U.S. 132, 137 (1918), of the implied warranty of the accuracy of a specification by its author, Hamm must show that it was misled by the Government's erroneous specification. See *Robbins Maintenance, Inc. v. United States*, 265 F.3d 1254, 1257 (Fed. Cir. 2001).

Hamm's proposal for the contract derived the daily policing acreage from the specified *mowing* acreage, without including any added acreage for the "streets, sidewalks, playground areas, parking lots, gutters and alleys" unambiguously required by contract § C.11 to be policed (findings 23, 27). Thus, Hamm has not shown that it was misled by the inaccuracy of the 39,427 annual acres specified by § B. Accordingly, we deny Hamm's policing claim.

CONCLUSION

We sustain the appeal in ASBCA No. 51864, and the mowing claim in ASBCA No. 51838, and deny the balance thereof. We remand the appeals to the parties for resolution of quantum in accordance with this decision.

Dated: 1 April 2003

DAVID W. JAMES, JR.
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. 51838, 51864, Appeals of E. L. Hamm & Associates, Inc., rendered in conformance with the Board's Charter.

Dated:

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