

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Servicios Profesionales de Mantenimiento, S.A.) ASBCA No. 52631
)
Under Contract No. DAHC92-94-C-0041)

APPEARANCE FOR THE APPELLANT: Michael C. Pierce, Esq.
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Miami, FL

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA
Chief Trial Attorney
MAJ Karl W. Kuhn, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE YOUNGER

In this appeal under a custodial services contract relating to 178 buildings, appellant asserts a two-part claim for misrepresentation and mutual mistake regarding a series of tasks called Project Work. Respondent denies that the contract was characterized by either misrepresentation or mutual mistake, and contends that appellant was paid in full for all Project Work tasks in accordance with the contract. We deny the appeal.

FINDINGS OF FACT

A. The Contract

1. By date of 28 January 1994, respondent awarded Contract No. DAHC92-94-C-0041 to appellant for custodial services for general service buildings in the Pacific areas of the Republic of Panama, at a firm fixed price of \$503,949.46 for a one year base performance period (R4, tabs A at 1; B at 1). In addition to the one year base period, the contract provided for three one year option periods (*id.* at 1-A of 107). Respondent subsequently exercised all three option periods, and at the end of the third option year, the contract was unilaterally extended by three additional months, yielding a total performance period extending from 1 February 1994 through 30 April 1998 (R4, tab A at 3; SR4, tab 9 at 000019-000020, 000111, 000196).

2. The contract contained various standard clauses, including clause G.3, PURCHASING AND ADMINISTRATION AUTHORITIES AND RESPONSIBILITIES, which defined the pre-award authority of the procuring contracting officer, the post-award authority of the administrative contracting officer, and provided that “[n]o oral or written statement of any

unauthorized person shall modify or otherwise affect the terms, conditions, specifications . . . of the solicitation or contract.” (R4, tab A at G-1)

3. The contract also contained specifications. Section B, SUPPLIES OR SERVICES AND PRICES/COSTS, included Notes, which provided in part:

1. The Unit Prices per Square (SQ), (1 SQ = 100 Square Feet (SF)), established under this contract, may be applied to determine changes in contract prices whenever areas of buildings or entire buildings are added or deleted during the performance periods.

....

3. Payment will be made for services actually performed and will be based on the prices/amounts indicated on the summary [of proposed prices].

(R4, tab A at B-1)

4. The contract also contained a work statement. Section C.1, GENERAL, provided in ¶ C.1.1, SCOPE OF WORK, that appellant was to perform custodial duties “consisting of routine and project work as defined in this Work Statement.” It categorized five types of routine work, which are not at issue here (*see* finding 23). It also required appellant to perform Project Work, as follows:

c. The work consists of, but is not limited to, the following:

1. Perform Custodial Duties, as described on Schedules and floor plans: (See Technical Exhibits)

....

1.2 Project Work - Type I, II & III: The custodial service(s) in the form of specific tasks to be performed as scheduled or as requested.

1.3 Additional Project Work: Listed on Bid Schedule.

(R4, tab B at C1-1) Section C.2 of the work statement, DEFINITIONS, contained ¶ C.2.2, TECHNICAL DEFINITIONS, which in subparagraph C.2.2.4 reiterated the foregoing definition of Project Work (*id.* at C2-3).

5. The work statement also included section C.5, WORK REQUIREMENTS, which contained subsection C.5.2, WORK REQUIREMENTS - SPECIFIC TASKS FOR (PROJECT WORK). In subsections C.5.2.1 through C.5.2.7, it described the components of Project Work as including the following tasks: stripping and refinishing resilient tile and terrazo floors; carpet cleaning, water extraction method; machine scrubbing of grouted tile floors; high dusting; washing of interior glass; washing of exterior windows; and cleaning office and classroom furniture. (R4, tab B at C5-7 to C5-9) We find that the tasks comprising Project Work fell under Contract Line Items (CLINs) 0002, 0005, 0008, 0011, 0014, 0017, 0020, and 0023 (R4, tab A at B-2, -3, -4, -6, -7, -8, -9, -10, -11).

6. For each component task of Project Work, the relevant technical exhibit set forth the frequencies with which the task was to be performed. One of the subject buildings, designated as Building 253 Ancon, has been used by the parties as an example. For that building, the SCHEDULE OF PROJECT WORK - REGULAR SERVICES provided:

<u>TASK</u>	<u>FREQUENCY</u>		
	Every 2 months	Every 6 months	Yearly
Strip & refinish floors		X	
Carpet cleaning			X
Machine scrubbing of tile floors			X
High dusting			X
Wash interior glass			X
Wash exterior glass			X
Clean office & classroom furniture			X
Clean library books & shelves			X
High cleaning			

(R4, tab B at TE1-8)

7. The work statement listed a total of 178 buildings in which appellant was to perform services (R4, tab B at C1-2 to C1-3). In paragraph C.1.2.1, MAPS AND FLOOR PLANS, it provided that “[t]he Contractor shall verify dimensions of buildings, and grounds and ascertain room finishes, amount of furniture, fixtures, windows, etc., so as to properly assess the work to be accomplished” (*id.* at C1-3).

8. We find that respondent employed measurement by squares in the contract (*see* finding 3) because of changes caused by the Panama Canal Treaty. As a result of the Treaty, U.S. Government agencies were constantly moving in and out of buildings, necessitating modifications adding or deleting tasks in particular buildings. Departing from the previous practice of agreeing to one price per building, breaking each building down into squares and

agreeing to a price per square made pricing modifications more efficient. (Tr. 100-01, 120-21, 191-92)

9. We find that the contract was drafted as a team effort by several individuals in different offices. Initially, the work statement was drafted by Ramiro Candanedo, an estimator serving as the “prep manager.” He submitted his draft to a pre-award contract specialist and a pre-award contract administrator who, in conjunction with a supervisor, prepared a solicitation. (Tr. 99, 119-20, 219-20) We further find no evidence that Mr. Candanedo had authority to modify or otherwise affect the terms of the contract (*see* finding 2).

B. *Bid Period*

10. Contract award was preceded by a solicitation. Section B of the solicitation required offerors to submit proposed prices on a detailed bid schedule matrix organized by CLIN, listing each of the 178 buildings, and listing the five types of Routine Work and the three types of Project Work that were possible for each building. The Bid Schedule set forth the total area for each building in terms of squares, with each square equalling 100 square feet. (R4, tab C at B-11, n. 1; B-13 to B-29)

11. Section B of the solicitation contained a SUMMARY OF PROPOSAL PRICES. It set forth the total estimated quantities of squares for the three types of Project Work and required offerors to submit their unit prices and total amounts for each performance period (base and options). For a portion of the base performance period, the SUMMARY appeared as follows:

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u> Est.	<u>U/M</u>	<u>U/P</u>	<u>AMOUNT</u>
0005	PROJECT WORK				
0005AA	TYPE I (REGULAR SERVICES)	8929	SQ	\$ _____	\$ _____
0005AB	TYPE II (HIGH SERVICES)	1998	SQ	\$ _____	\$ _____
0005AC	TYPE III (RESTROOM, LOCKERS, SHOWERS)	86	SQ	\$ _____	\$ _____
	TOTAL AMOUNT, PROJECT WORK, CLIN 0005				\$ _____

(R4, tab C at B-3, *see also* B-4, B-6, B-7 to B-11) Note 2 appearing at the end of the SUMMARY advised bidders that prices on the Bid Schedule took precedence over those in the SUMMARY:

[t]he Summary of Proposal Prices contained on Pages B-1 thru [sic] B-12 is an administrative expedient to facilitate price evaluation. In the event of any discrepancy between prices in this SUMMARY and those in the Bid Schedule on Pages B-13 thru [sic] B-60, the unit prices in the Bid Schedule shall govern.

(R4, tab A at B-11)

12. It is undisputed that, during performance, appellant's payment for Project Work - Regular Services for a particular building was based upon the price per building as detailed by appellant on the Bid Schedule (*see* finding 11). The building price was then divided by the number of times – or frequencies – that the tasks were performed, to arrive at the payment for each occurrence. Thus, for Building 253 Ancon, the payment per occurrence was computed as follows:

- (a) bid price in Bid Schedule: \$465/year (R4, tab A at B-16);
- (b) frequency per year: three occurrences, consisting of two occurrences per year for stripping and refinishing every six months, and one occurrence per year for the other seven tasks, all of which were performed yearly (*see* finding 6);
- (c) payment per occurrence: \$155, consisting of \$465/year divided by three occurrences (SR4, tab 3, appellant's invoice no. 104 and attached payment voucher; tr. 199-202).

13. By letter to respondent dated 19 October 1993, appellant's general manager and part owner, Victor Urrutia, stated that "pages of Supplies or Services & Prices - Costs (B9, B10, B13, B14, B17, B18) do not specify how we can [e]stablish the prices for the Project Work of: Every two, Every six and Yearly." Appellant also stated that, "as it is right now in the solicitation, we have to consider it as one Grand Total." (R4, tab D)

14. Effective 20 October 1993, respondent issued Amendment 0001 to the solicitation (R4, tab E). In the amendment, respondent added new Notes 7 and 8, in addition to the notes already appearing in the specifications (*see* finding 3), as follows:

7. Unit Price for any type of "Project Work" per Square -

Contractor shall determine a price per building for each period (2 months, 6 months, and yearly, as applicable) for all

buildings separately. Divide the Total Amount of these periods by Total Quantity of Squares. This will result in an average “Unit Price per Square” for each “Type” of Project Work.

8. Payment for work accomplished under CLINS 0002, 0005, 0008 , 0011, 0014, 0017, 0020, and 0023 [*see* finding 5] are based on an average “Unit Price per Square” and will be made on the basis of actual quantities of work performed for each period (2 months, 6 months, or yearly).

(*Id.* at 2) We find that, after the issuance of Amendment 0001, appellant made no further pre-bid inquiry (tr. 126), and in particular raised no question regarding the calculation of squares in the contract.

15. By letter to appellant dated 29 November 1993, the contracting officer noted that appellant’s offer for both Lots I and II (Base Plus Option Periods) was “substantially lower” than the Government estimate and requested that appellant verify its proposed prices (R4, tab G). In response, appellant advised by letter dated 1 December 1993 that “we reaffirm our prices” (R4, tab H).

16. We find that, before the award, Calculos y Mantenimiento, a company sharing common ownership with appellant, was the incumbent contractor, as a result of which appellant’s owners, Mr. Urrutia and his daughter Itzel Silgado, knew the subject buildings well (tr. 58, 65, 190-91, 194-95; *see also* tr. 19, 40, 50). Mrs. Silgado knew the buildings better than some of respondent’s contracting personnel did (tr. 195).

17. We find no credible evidence that appellant relied upon its present contract interpretation when bidding. At trial, Mr. Urrutia answered affirmatively when asked whether he knew that respondent’s estimates of the number of squares were inaccurate when he bid on the contract (tr. 30). He also testified that, at the time of bid, he accepted the amount of squares shown in the bid documents “[b]ecause I couldn’t change it, I had to accept it” (tr. 41).

C. *Performance*

18. We find that appellant performed the work, and invoiced for payment, from February 1994 to early 1998, without raising any question regarding payment calculations for project work (tr. 202-03). During this period, the parties entered into 89 modifications to the contract, most of which were bilateral (SR4, tab 9 at 000019-000286; tr. 194). They also held meetings and had telephone contacts two to three times per week (tr. 220; *see also* SR4, tabs 2, 4-5).

19. In or about January 1998, however, appellant's president orally advised Mrs. Catherine Scribner, the contract administrator, that he believed that appellant was underpaid for the Project Work portion of the contract (*see* findings 4-5), which he asserted yielded low payments in relation to the number of manhours and amount of work in certain buildings. In a subsequent meeting on 22 May 1998, appellant's president reiterated these assertions, citing his debts, and Mrs. Scribner advised him to submit a claim demonstrating by how much appellant was underpaid. (SR4, tab 7)

20. During performance, Mrs. Scribner's responsibilities as contract administrator included payment of appellant's invoices (tr. 220). We find that, during performance, appellant was paid by CLIN for work actually performed, rather than by square. Mrs. Scribner testified, and we find, that appellant

was paid by CLIN for work performed. He was never paid by square. If you look at the bills he was paid by building. Whether it was routine work and he had a monthly amount that he billed or whether he had a project work invoice and that invoice would have the building number and then he put the percentage of work he performed on that frequency on that project work.

(Tr. 227-28)

21. With respect to appellant's contention that it was not paid for window cleaning, high dusting, cleaning office and classroom furniture, and cleaning library books and shelves, Mrs. Scribner testified, and we find, that appellant was paid for performing those services. She explained that appellant "priced them out, he billed them and he was paid for them" (tr. 227). Mr. Candanedo generally corroborated this testimony (tr. 111).

22. Mrs. Scribner testified that she did not recall appellant expressing any concerns during performance regarding miscalculation of squares (tr. 214).

D. *Claim and Appeal*

23. By letter to respondent dated 13 September 1999, appellant's counsel submitted the present claim for \$474,438.51, consisting of: (a) \$345,663.19 "for Tasks performed in accordance to the Schedule B . . . based on the unit price per SQ bid"; and (b) \$128,775.32 "for erroneous total squares calculations for all Tasks performed for all of the buildings during the entire duration of the Contract, including Tasks, which were not included in the calculation of the squares" (R4, tab I at 5) (underscoring in original). Appellant's counsel stated that the claim was "[s]pecifically for the performance of CLINS 0002AA, 0005AA, 0008AA, 0011AA, 0014AA, 0017AA, 0020AA, and 0023AA Project Work, Type I (Regular Services) [*see* finding 5] for the . . . base year and three option periods from 1

January 1994 through 31 July 1997” (*id.* at 2). Using Building 253 Ancon “as an example to substantiate our claim,” appellant asserted that: (a) “[f]ive tasks” – high dusting, washing of interior glass, washing of exterior windows, cleaning office and classroom furniture, and cleaning library books and shelves – “were not included in the total squares calculation” for Building 253; (b) three of the five tasks – high dusting, cleaning office and classroom furniture, and cleaning library books and shelves – “cannot be converted into squares” and questioned how and when appellant was paid for them; (c) two of the tasks – washing of interior glass, and washing of exterior windows – “can be measured by squares but were not measured and included in the total squares for the building”; and (d) three remaining tasks – stripping and refinishing floors, carpet cleaning, and machine scrubbing of tile floors – were compensated on a yearly basis when they were performed 1.33 times per year (*id.* at 2-3). At trial, appellant reaffirmed that the claim related only to Project Work - Regular Services, not to Routine Work (tr. 51, 97).

24. By letter to respondent dated 28 September 1999, appellant’s counsel, who was duly authorized, certified the claim (R4, tab I at 1). Subsequently, by decision dated 23 November 1999, the contracting officer denied the claim (*id.*, tab J). This timely appeal followed.

25. Appellant adduced expert testimony from Enrique A. Payne, a former contract specialist for the Government. In his pre-filed testimony, he opined that:

tasks were performed by the Contractor which were not computed in the contract and tasks which were erroneously computed for payment. In addition to tasks which were performed by the Contractor but not paid, there is also the issue of squares not properly calculated in various buildings which I have reviewed. Specifically, squares were incorrectly calculated in building 95. This can be proven by the fact that [appellant] was compensated for erroneous calculation of squares in Building 95. I have also reviewed the square estimates for several other buildings (such as buildings 131, 155, 217, 519 and 520 in Clayton) and will testify that they are incorrect.

(App. ex. 16 at 1-2) We do not find this testimony persuasive because: (a) Mr. Payne’s expertise is largely in construction, rather than custodial, contracts (tr. 165-69); (b) he reviewed the measurements of the buildings in 2001, although they may have been altered after being vacated by U.S. forces and turned over to Panama in 1999 (tr. 171-77); (c) he failed to demonstrate that the square calculations for Buildings 155, 217, 519 and 520 Clayton were incorrect, and dealt only with Building 131 Clayton (tr. 138-86); and (d) his effort to demonstrate erroneous measurement of squares by the use of 93 squares for

Building 131 Clayton in this contract and 201 squares for the same building in a 1998 contract (tr. 179-82) was persuasively discounted by Mrs. Scribner:

Well, that was so common. I mean it could have been that they were using more office space. Towards the end of '98 a lot of offices were being closed down and perhaps one unit had moved to that building and so they were cleaning 200 squares as opposed to 90 before. There are many, many reasons why those would be different.

(Tr. 238; *see also* tr. 241-42)

26. We find insufficient evidence regarding alleged faulty billing instructions verbally given by Mr. Candanedo to Mrs. Salgado in or about February 1994, when appellant submitted its first invoice under the contract. Mrs. Silgado did not testify. Appellant offered an affidavit from Mr. Candanedo relating in part to the conversation but withdrew the affidavit after objection (tr. 5-6, 8).

27. We find no credible evidence relating the \$474,438.51 in quantum claimed to performance or nonperformance of any contractual tasks.

DECISION

We confess to considerable difficulty in understanding the grounds that appellant relies upon for recovery, which are at times ambiguously stated. As articulated in the briefs, appellant advances two grounds. The first, which appellant characterizes as Claim A, relates to the tasks of window cleaning, high dusting, cleaning office and classroom furniture and cleaning library books and shelves, all of which fall under the rubric of Project Work - Regular Services (*see* findings 4-6). Appellant broadly asserts that “[n]one of these tasks on any of the 178 buildings were paid for during the entire period of the contract from 1994 through 1998.” (Appellant’s Opening Brief (App. br.) at 9) The second ground of recovery, which appellant characterizes as Claim B, is for stripping and refinishing floors, carpet cleaning, and machine scrubbing of tile floors, which also fall under the rubric of Project Work - Regular Services. Appellant asserts that “[t]hese tasks were paid for by the Government only on a one-time basis per year when they were, in fact, performed several times.” (App. br. at 9) We address Claim A and Claim B in turn below.

The stated legal theory underlying Claim A is misrepresentation. Appellant tells us that “[t]he outcome of this appeal is governed largely by the decision in *Womack v. United States*, 389 F.2d 793 (Ct. Cl. 1968)” because “Mr. Candanedo’s inadvertent misrepresentation [apparently regarding the number of squares]. . . resulted in a totally flawed Custodial Services contract and a totally confused contractor.” (App. br. at 10) Appellant explains that Mr. Candanedo “drafted an erroneous, confusing contract,” and that

he “innocently or intentionally [gave] Ms. Silgado faulty billing instructions” when she contacted him in February 1994 regarding appellant’s first invoice. (Reply to the Gov’t post Hr’g br. (reply) at 5; app. br. at 2)

Womack is inapplicable. The Court of Claims there concluded that the Government estimate constituted an inadvertent misrepresentation stemming from negligent preparation of the estimated quantities through a failure to employ information for an accurate estimate. *Womack, supra*, 389 F.2d at 799-801. On this record, however, no misrepresentation regarding quantities has been established. Even disregarding the contractual requirement that appellant verify the dimensions of the buildings (finding 7), the evidence against appellant’s theory includes: (a) the unfounded characterization of Mr. Candanedo’s role (finding 9); (b) appellant’s familiarity – possibly greater than respondent’s – with the buildings (finding 16); (c) Mr. Urrutia’s testimony that he knew that the estimate of the number of squares was inaccurate when he bid (finding 17); and (d) Mr. Payne’s failure to establish miscalculation of squares in any event (finding 25). Mr. Urrutia’s testimony is in itself fatal to Claim A. It establishes that appellant “cannot recover because it made an affirmative decision to bid on a specification, which it knew to be inaccurate.” *Robins Maintenance, Inc. v. United States*, 265 F.3d 1254, 1258 (Fed. Cir. 2001). In addition, apart from the claimed misrepresentation regarding quantities, no misrepresentation has been established regarding the alleged “faulty billing instructions” (finding 26).

Appellant’s contention that respondent “drafted an erroneous, confusing contract,” appears more consistent with a claim of ambiguity than of misrepresentation. It is familiar that

[a] contract provision that is “reasonably susceptible of more than one interpretation” is ambiguous. . . . If the ambiguity is “obvious, gross [or] glaring,” then it is patent, . . . and the contractor must “inquire of the contracting officer as to the true meaning of the contract before submitting a bid.” . . . By contrast, if the ambiguity is not glaring, substantial or patently obvious, then it is latent, . . . and the contractor must establish reliance on its current interpretation in bidding. . . .

H. Bendzulla Contracting, ASBCA No. 51869, 00-1 BCA ¶ 30,803 at 152,074-75 (citations omitted).

Relief for ambiguity has not been established on the present record. With respect to patent ambiguities, appellant sought pre-bid clarification only regarding the matters addressed by Notes 7 and 8 (findings 13-14). Nonetheless, considering the examples cited in the claim regarding Building 253 Ancon (*see* finding 23), it appears that the first three could properly be characterized as “glaring, substantial or patently obvious.” *Bendzulla*,

supra, 00-1 BCA at 152,075. *See Lockheed Martin IR Imaging Systems, Inc. v. West*, 108 F.3d 319, 322 (Fed. Cir. 1997) (noting that patent ambiguity must, *inter alia*, “be apparent to a reasonable person in the claimant’s position”). None of the first three cited examples warrant relief because all involve alleged miscalculation of squares, and that issue was not raised pre-bid (*see* finding 14). In any event all three cited examples are controverted by other evidence in the record. Thus, appellant’s contention that “[f]ive tasks . . . were not included in the total squares” calculation (*see* finding 23) ignores Mr. Urrutia’s testimony that he knew squares were miscalculated before he bid (*see* finding 17). Similarly, appellant’s contention that three tasks “cannot be converted into squares” (*see* finding 23) is addressed by testimony from Mrs. Scribner and Mr. Candanedo that appellant was paid by CLIN for work performed, not by square (findings 20-21; *see also* finding 8). Likewise, appellant’s contention that two tasks “can be measured by squares but were not measured and included in the total squares for the building” (*see* finding 23) ignores Mr. Urrutia’s admission (*see* finding 17).

If appellant’s contention regarding “an erroneous, confusing contract” does not fall under the rubric of patent ambiguity, then it amounts to a latent ambiguity. *Bendzulla, supra*, 152,075. Appellant cannot prevail on such a claim, however, because of the lack of proof of reliance on its presently proffered interpretation in bidding, and because of Mr. Urrutia’s admission regarding the square calculations (finding 17).

The parties’ lengthy pre-dispute conduct (finding 18) also casts doubt on whether there was any misrepresentation or ambiguity, latent or patent. We look to that conduct for insight into the parties’ underlying intentions. *See Macke Co. v. United States*, 467 F.2d 1323, 1325 (Ct. Cl. 1972) (noting that “how the parties act under the arrangement, before the advent of controversy, is often more revealing [of intentions] than the dry language of the written agreement itself”). During nearly four years of performance, there were abundant opportunities to raise the issue of miscalculation of squares, but appellant did not do so (findings 18, 22). “Appellant’s apparent acceptance of the Government’s position over a lengthy period must be considered as evidence of a contemporaneous interpretation inconsistent with its present posture.” *Chemical Technology, Inc.*, ASBCA No. 21863, 80-2 BCA ¶ 14,728 at 72,644.

B. *Claim B*

The legal theory underlying Claim B appears to be mutual mistake. Appellant asserts that “[t]he miscalculations in Claim B, which were a mutual mistake by both the Government and [appellant], were not discovered by Mr. Urrutia until 1996” and relies upon *Atlas Corporation v. United States*, 895 F.2d 745, 750 (Fed. Cir.), *cert. denied*, 498 U.S. 811 (1990), in which the court denied reformation for mutual mistake. Appellant contends that both parties “were mistaken in their belief about calculations for payment based on incomplete information on the buildings being cleaned.” (App. br. at 10; reply at 1)

Among the reasons that *Atlas Corporation* is inapposite is that the requisite mistaken belief is not present here. Even disregarding appellant's contractual duty to "verify dimensions of buildings . . . and ascertain room finishes, amount of furniture, fixtures, windows, etc., so as to properly assess the work to be accomplished" (finding 7), appellant's theory of mutually "incomplete information on the buildings being cleaned" ignores evidence that appellant's management knew the buildings well, perhaps better than some of respondent's contracting personnel (*see* finding 16), as well as evidence of the parties' pre-dispute conduct (finding 18), which afforded abundant opportunities to correct any "mistaken . . . belief about calculations for payment." The lack of correction warrants the conclusion that the parties believed that the contract as administered reflected their intentions. *Macke Co.*, *supra*, 467 F.2d at 1325; *Chemical Technology*, *supra*, 80-2 BCA at 72,644. Finally, Mr. Payne failed to establish erroneous square calculations at trial (finding 25). The foregoing evidentiary considerations persuasively undercut the fourth cited example in the claim, that appellant was paid yearly for three tasks performed 1.33 times per year (*see* finding 23).

CONCLUSION

The appeal is denied.

Dated: 23 May 2003

ALEXANDER YOUNGER
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 No. 52631, Appeal of Servicios Profesionales de Mantenimiento, S.A., rendered in conformance with the Board's Charter.

Dated:

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