

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
W. B. Meredith II, Inc.) ASBCA No. 53590
)
Under Contract No. N62470-99-C-5552)

APPEARANCES FOR THE APPELLANT: Terence Murphy, Esq.
Patrick H. O'Donnell, Esq.
Kaufman & Canoles
Norfolk, VA

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.
Navy Chief Trial Attorney
Wilson J. Campbell, Esq.
Trial Attorney
Engineering Field Activity Chesapeake
Washington, DC

OPINION BY ADMINISTRATIVE JUDGE TING
PURSUANT TO RULE 11

W. B. Meredith II, Inc. (Meredith) was awarded a contract to renovate a building at the Naval Station in Norfolk, Virginia. It appeals from a contracting officer's (CO) final decision denying its claim for the costs of wiring 16 (type S3) suites in the building. The parties have elected to submit the case on the written record without a hearing pursuant to Board Rule 11. Only entitlement is before us.

The record consists of the 11 documents, including the Rule 4 file, listed in the parties' 14 May 2002 joint motion to settle the record. That motion is granted. The record includes the deposition transcripts of: (1) David F. Lucas (Lucas), president of David L. Lucas Electrical Contractors, Inc. (Lucas Electrical), Meredith's electrical subcontractor on the project (ex. 1); (2) Richard Jakobowski (Jakobowski), Meredith's vice president (ex. 2); (3) Mitch Guidt (Guidt), Lucas Electrical's vice president of field operations (ex. 3); (4) T. Gene Owen (Owen), assistant resident officer in charge of construction (AROICC) (ex. 4); (5) Kirby J. Foytik (Foytik), Navy Public Works Center (NPWC) electrical design engineer (ex. 5); and (6) Richard E. Rogers (Rogers), NPWC architect (ex. 6).

FINDINGS OF FACT

1. On 30 September 1999, the Naval Facilities Engineering Command awarded Contract No. N62470-99-C-5552 (the Building SP-29 contract) to Meredith. The contract was in the amount of \$8,831,434. (R4, tab 1)

Contract Requirements

2. The contract required repair and renovation work in a building known as BEH-SP-29 (Building SP-29) at the Naval Station in Norfolk, Virginia. The building is used for lodging by the troops (Jakobowski dep., ex. 2 at 9). SECTION 01110, "SUMMARY OF WORK," ¶ 1.1.1, of the contract provides the following description of the project:

The work includes the renovation of the interior of the First Floor, Second Floor and Attic of Building SP-29. The interior of Building SP-29 will be completely demolished. Exterior doors, plumbing, mechanical and electrical systems will be replaced.

(R4, tab 1) The contract documents do not exclude any electrical systems in any room of the building interior from being completely demolished and from being replaced.

3. DIVISION 00 - "DOCUMENTS" - incorporated by reference DFARS 252.236-7001 CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS (DEC 1991) (R4, tab 1). This clause imposes obligations on both the Government and the contractor. Among the contractor's obligations are:

(b) The Contractor shall --

(1) Check all drawings immediately upon receipt;

....

(3) Promptly notify the Contracting Officer of any discrepancies; and

(4) Be responsible for any errors which might have been avoided by complying with this paragraph (b).

....

(d) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the contractor from performing such omitted or misdescribed details of the work, but shall be performed as if fully and correctly set forth and described in the drawings and specifications.

4. Prior to the Building SP-29 renovation project, the Navy had renovated an almost identical building known as the U-20 Building. The architect/engineering work on the U-20 Building was done by an outside firm. Because the SP-29 and U-20 projects involved “practically identical buildings,” NPWC used the U-20 Building plans and specifications in preparing the Building SP-29 plans and specifications in-house. (Foytik dep., ex. 5 at 7-8; Rogers dep., ex. 6 at 7-8)

5. It would normally have taken six to seven months to design a project of the size of the SP-29 Building. The Building SP-29 project took only three to four months to design because NPWC received authorization to proceed with the project late, and the job had to be awarded by the end of fiscal year 1999 to avoid losing available funding. Normally, design of a project goes through three phases: (1) 35 percent design, (2) 90 percent pre-final, and (3) final drawings. Because of time constraints, the design of the Building SP-29 went from initial “sit down” with NPWC’s customer (Navy Housing) “right to 100 [percent].” The Navy did not have time to do “a final coordination check.” (Rogers dep., ex. 6 at 6, 9, 14-15)

6. There are 269 sheets of drawings for the Building SP-29 project, including architectural (“A”) drawings, structural (“S”) drawings, plumbing (“P”) drawings, mechanical (“M”) drawings, and electrical (“E”) drawings (R4, tab 3). The drawings show that Building SP-29 has two floors, and each floor has a four-part main section designated as C-1, C-2A, C-2B, C-3, and four wings, A, B, D, and E (*e.g.*, R4, tab 3, drawing sheet E1 18).

7. The drawing cover-sheet (drawing sheet G001) contains, among other information, “BUILDING INFORMATION.” The block entitled “GENERAL” contains the following suite count:

SUITE COUNT:	145
BED COUNT:	268
GROSS SQUARE FOOTAGE:	133,030
TYPE 1 SUITE COUNT:	64

TYPE 2 SUITE COUNT:	16
TYPE 3 SUITE COUNT:	16
TYPE 4 SUITE COUNT:	43
TYPE 5 SUITE COUNT:	4
TYPE 6 SUITE COUNT:	2

(R4, tab 3, sheet 1 of 269) The suite count with respect to type 3 (referred to as S3 suites) is wrong. In actuality, there are only 12 S3 suites.

8. Architectural drawing A403 contains the reflected ceiling plans for the S1, S2 and S3 suites. The “REFLECTED CEILING PLAN LEGEND” on the same drawing shows symbols for various ceiling fixtures. For electrical fixtures, the reader is directed to go to electrical drawings¹. For example, the notes for both the recessed compact fluorescent or incandescent downlight (of which there are four indicated for S3 suites) and the ceiling fan (of which there is one indicated for S3 suites), direct the reader to “SEE ELECTRICAL.” (R4, tab 3, sheet 73 of 269)

9. When one goes to the “ENLARGED ELECTRICAL SUITE PLANS” -- electrical drawings E401 and E402 -- one finds the electrical wiring plan for S1, S1A,² S1B, S2 and S6 suites on electrical drawing E401, and the electrical wiring plan for S4, S4A, S5 and S5A suites on drawing E402. There is no electrical plan for S3 suites. (R4, tab 3, sheets 251, 252 of 269).

10. The plans for new electrical work for each wing and each floor of the SP-29 Building, known as “ELEC NEW WORK PLAN[S],” are shown in a number of electrical drawings. A total of 12 S3 suites are found in these drawings. Their locations, room numbers and drawing references are summarized below:

WINGS/FLOOR	S3 SUITE ROOM No.	DRAWING REFERENCE
A/1	116	E118
D/1	162, 170	E124
E/1	175	E125
A/2	216, 224	E126
B/2	229, 237	E127
D/2	262, 270	E132
E/2	275, 283	E133

(R4, tab 3, sheets 232, 238, 239, 240, 241, 246 and 247 of 269)

11. Electrical drawings E604 through E614 are “ELECTRICAL PANEL SCHEDULES” (R4, tab 3, sheets 259-69 of 269). A panel³ schedule “tell[s] you the panel

that you need, the number of breakers, how many circuits you're going to run from that panel and to where they're going and what they're connecting to" (Foytik dep., ex. 5 at 20). Each suite is connected to the panel by pulling a certain number of circuits through a conduit (Lucas dep., ex. 1 at 58). A conduit is a steel tube that carries electrical wires. Generally, a conduit is run from a panel to a junction box in a room. Various receptacles⁴ in the room are wired to the junction box. (Lucas dep., ex. 1 at 65-66) Without an electrical wiring plan for S3 suites, one would be left without instructions as to how to wire the various receptacles in the S3 suites to the ceiling junction boxes.

12. In this case, Meredith does not dispute that it was required to provide circuitry from at least the electrical panels to the ceiling junction box⁵ in each of the S3 suites. Without an "ENLARGED ELECTRICAL SUITE PLAN" for the S3 suites, Meredith contends that there is no contract requirement to wire from the ceiling junction boxes to the various receptacles in the S3 suites. (Guidt dep., ex. 3 at 31; Lucas dep., ex. 1 at 67)

13. The 12 S3 suites shown on electrical drawings E118, E124, E125, E126, E127, E132 and E133 refer to a specific electrical panel schedule. The panel schedule specifies the wire size and the various types of receptacles for that suite.⁶ For example, electrical drawing E124 (Sheet 238 of 269) pertains to the new electrical work in Wing D, first floor. This drawing shows Room No. 162 to be a S3 suite. Room No. 162 refers to panel schedule "L1DB." (R4, tab 3, sheet 238 of 269) Panel Schedule "L1DB" is found on electrical drawing E607. Electrical drawing E607 shows that for Room No. 162, size 12 wiring is required for "LIGHTING," "KITCH RECPTS," "KITCH/BATH RECPTS," "BEDRM-A RECPTS," "BEDRM-B RECPTS," and "REFRIDGE RECPT." (R4, tab 3, sheet 262 of 269)

The Prime Contractor's Role in the Bidding Process

14. As the prime contractor, Meredith chose to perform some of the contract work, such as carpentry and the installation of cabinets itself. After the Government issued the solicitation on the Building SP-29 project, Meredith sent out the project specifications and drawings to potential mechanical, electrical, sprinkler, flooring and drywall subcontractors. (Jakobowski dep., ex. 2 at 23) There is no evidence that Meredith reviewed the electrical plans and specifications. According to its vice president, Meredith would have deferred to its electrical subcontractor who had expertise in the area (Jakobowski dep., ex. 2 at 25). Meredith received a "lump-sum" bid price from Lucas Electrical to do the electrical portion of the Building SP-29 contract (*id.* at 34). Meredith acknowledged that it did not include the costs of wiring S3 suites in its bid to the Government inasmuch as Lucas did not include such costs in its bid (app. br. at 2). Meredith further acknowledged that it did not seek clarification before bid opening (*id.* at 12).

15. Meredith acknowledged that it performed the mechanical and plumbing work required by the contract in the S3 suites (Jakobowski dep., ex. 2 at 45-46). Without functional electrical outlets or receptacles, the S3 suites would not be useful in providing lodging for the troops. Lucas suggested that the Government might have deliberately left out wiring the S3 suites because of funding problems. There is, however, no evidence to support this proposition. (Lucas dep., ex. 1 at 52-53)

Subcontractor's Role in the Bidding Process

16. In bidding the Building SP-29 contract, Lucas Electrical received from Meredith not only the electrical drawings but “[t]he entire thing” (Lucas dep., ex. 1 at 21). Guidt was Lucas Electrical’s vice president of field operations. He prepared Lucas Electrical’s bid on the Building SP-29 project and submitted the bid to two general contractors competing for the work. (*Id.* at 9-11)

17. Lucas Electrical did not include any money in its bid for wiring the S3 suites (Guidt dep., ex. 3 at 53). He gave the following explanation at his deposition:

Q. And did the floor plan show type 3 suites?

A. The floor plan does show type S3 suites which is -- they do not match up with the electricals.

Q. And did you know that before you bid the contract?

A. No. What we did, we went in, we took the S1 suites went all the way through, and we counted them up. We did our individual footage, multiply it by the factor which is shown on drawing G00101 [sic], and that’s where we got out our counts and quantities. There was no S3 suite detail shown, so we had zero for the S3.

We did not get into why, because it’s like I say, it’s a prerogative of the owner. We didn’t know what they were going to use that room for.

(*Id.* at 21)

18. Guidt testified that he reviewed drawing G001 (suite count) prior to bid. He acknowledged that prior to bid, he did not review architectural drawing A403, the reflected ceiling plan (which would have alerted him to ceiling electrical fixtures in S3 suites), because it was for “coordination and layout.” (Guidt dep., ex. 3 at 12, 13, 20) He explained

the omission of S3 suites from the electrical plans E401 and E402 did not trouble him because:

A. Because when we take off, we take off what's on [the] contract drawings. . . .

That is in the owner's design. On their end of it. We're not in the business to get into the design and try to think. We're, basically, we're bean counters. What's on the drawings we take off, we summarize, and we submit.

(*Id.* at 14)

19. Mr. Lucas, president of Lucas Electrical, testified that even if the contract plans and specifications required it to run conduits from the panels to the S3 suites, it does “[n]ot necessarily” mean it was also required to place electrical wiring in them. He testified “[i]t could go either way. You could pull the wire and chop it off and just let it sit there.” (Lucas dep., ex. 1 at 68) His approach to seeking clarification where the contract requirement is unclear is consistent with Guidt’s “bean counting” approach:

A. We usually bid on jobs, and we bid them according to the drawings. If it's on the drawings, it's part of the contract. If it's not on the drawings, it's not part of the contract.

(*Id.* at 69)

20. Lucas did not discuss the omission of the S3 suite electrical plan (*i.e.*, in drawing sheets E401 and E402) with Meredith before entering into a contract with Meredith (Lucas dep., ex. 1 at 13). The issue of whether S3 suites had to be wired did not come up until Lucas was at the site performing electrical work (*id.* at 91; Guidt dep., ex. 3 at 27). It is not clear from Guidt’s testimony whether he was not aware of the omission when he put Lucas Electrical’s bid together, or whether he was aware of the omission but chose to make a unilateral determination that wiring S3 suites were not covered by the contract. We find that Meredith’s failure to check the electrical drawings and Lucas Electrical’s failure to check architectural drawing A403 both contributed to omitting the costs of wiring S3 suites in Meredith’s bid.

Events Leading to the Submission of Meredith’s Claim

21. In a letter dated 1 December 1999 to Meredith, Lucas Electrical alleged there was a discrepancy with respect to the number of S3 suites between the architectural drawings and drawing sheet G001 (suite count). Lucas Electrical pointed out that electrical

drawings E401 and E402 contained no details for the S3 suites. Meredith was requested “to provide a detailed electrical layout drawing of a type S3 suite so that we will know what type of fixtures to install⁷¹.” The letter stated that upon receipt of the detailed layout drawing, Lucas Electrical would provide its costs to wire the 16 S3 suites. (R4, tab 4)

22. On 7 December 1999, Meredith submitted to the Government a Request for Information (RFI) No. 16. The RFI forwarded Lucas Electrical’s 1 December 1999 request and commented “[a]rchitectural sheets, electrical sheets and the general pages do not agree in terms of the number of S3 suites.” (R4, tab 4)

23. The Government replied to the RFI on 21 December 1999:

There are 16 (S3) suites per architectural drawings. There are 2 (S6) suites per architectural drawings. Electrical drawings call all 18 suites as (S6). Use (S6) layouts for electrical work.

(R4, tab 4) This response was provided by Rogers, the Navy architect in charge of the Building SP-29 renovation (Rogers dep., ex. 6 at 5). The information Rogers provided was incorrect. Although drawing G001 gave a suite count of 16 S3 suites, the architectural drawings show only 12 S3 suites (*see* findings 7, 10).

24. In responding to the RFI, Rogers relied on the information provided by Foytik. Foytik was the electrical engineer at NPWC who designed the electrical work for the Building SP-29 renovation project. (Foytik dep., ex. 5 at 3-5)

25. The layouts of S3 suites and the S6 suites are “very nearly identical except [they are] more or less mirror images” (Owen dep., ex. 4 at 24). Foytik testified that it was his intent to wire the S3 suites like the S6 suites (Foytik dep., ex. 5 at 12-13). He testified that “[t]he general layout of the room lends itself to looking at these details and identifying one that’s similar” (*id.* at 25). He testified that if he had to do the electrical plan (E401) again, he still would not prepare a separate wiring detail for S3 suites, but would include a note on the S6 electrical plan stating that S3 suites are to be similarly wired (Foytik dep. ex. 5 at 26). Notwithstanding Foytik’s testimony, Rogers, his supervisor, did not believe that anyone looking at S3 and S6 suites would conclude they are “mirror image” of each other in terms of wiring (Rogers dep., ex. 6 at 14). We find that without a note to that effect on electrical drawing E401, a bidder could not reasonably be expected to discern the Government’s intent that S3 suites were to be wired in a “mirror image” fashion to S6 suites.

26. In a letter dated 4 February 2000 to Meredith, Lucas Electrical acknowledged receipt of the Government’s 21 December 1999 reply to RFI No. 16. Lucas Electrical’s letter forwarded a \$112,223 proposal for wiring 16 S3 suites “based on using the Type S6

Suite as directed in the reply to RFI#16.” Lucas Electrical said that it “did not have this work included in our price” because “[t]he contract electrical drawings did not have a detail for wiring the Type S3 Suites at bid time.” (R4, tab 5)

27. By letter dated 1 March 2000 to AROICC Owen, Meredith forwarded Lucas Electrical’s proposal and requested a contract modification in the amount of \$112,223 and a 40 calendar day time extension to “[f]urnish and install the omitted electrical work at the Type S3 suites as per RFI#16” (R4, tab 6).

28. In his reply of 30 March 2000, AROICC Owen advised Meredith that the work covered by its 1 March 2000 proposal “is already covered as a part of your contract.” He explained:

While there is a discrepancy in suite designations between the Architectural and Electrical sheets, the Electrical sheets are consistent. All the suites designated as “S3” and “S6” on the Architectural sheets are designated as “S6” on the Electrical sheets and an electrical detail designated “S6” is provided on the electrical sheets to cover all these suites.

AROICC Owen directed Meredith to provide all electrical work in the S3 suites in accordance with the S6 suite design at no additional costs to the Government. (R4, tab 7)

29. By letter dated 30 August 2000, Lucas Electrical reminded Meredith that the proposal to wire the S3 suites was submitted “21 weeks ago” and that the proposal would only be honored until 12 September 2000. Lucas Electrical stated also that “[w]e will not accept an answer of using a Type S6 Suite detail in lieu of the Type S3 and not consider this as a change to the cost of the contract.” (R4, tab 8)

30. Meredith notified the ROICC by letter dated 14 September 2000 that it would install electrical devices and components in S3 suites as indicated in the electrical plan for S6 suites on electrical drawing E401. Meredith’s letter stated that it disagreed with the Government’s position and it intends to seek additional compensation for the work directed. (R4, tab 9)

31. By letter dated 16 January 2001, Lucas Electrical revised its 4 February 2000 proposal by forwarding to Meredith a revised cost breakdown of \$75,878 for “work required for 12 Type S3 suites that were not detailed on [the] contract electrical drawings” (R4, tabs 6, 10).

32. Lucas Electrical’s meeting with Meredith and the Government did not resolve the “Type S3 Suite problem.” By letter dated 4 April 2001 to Meredith, Lucas Electrical

asked for a CO's decision regarding "our dispute on the Type S3 suite details that were left off the contract bid documents." (R4, tab 10)

33. In a letter hand-delivered to the ROICC on 16 April 2001, Meredith requested a CO final decision "on the matter of the electrical work required in the type S3 suites" in the amount of \$99,918. Meredith also sought a 30-day time extension "[b]ecause of the disruptions to the contractor's work schedule that this issue has presented." Meredith's letter explained that while the architectural drawings A402 through A407 show the various suite types including S3 suites, the electrical drawings E401 and E402 contained no electrical details for S3 suites. The letter summarized the parties' dispute as follows:

Further investigation reveals that there are twelve (12) S3 suites within the scope of the renovation. The disagreement in question revolves around our electrical subcontractor's position that there was no electrical work in the S3 suites as was detailed for the other suite types on E401 and E402. The ROICC's position has been that the work should have been included in the contractor[s] bid day price and that it is included in his scope of work.

(R4, tab 11)

34. Meredith's 25 June 2001 letter to the ROICC increased its claim to \$126,690. The increase was based on wiring 16 as opposed to 12 S3 suites. Meredith explained that "the electrical floor plans show twelve (12) 'S3' suite designations, while the architectural floor plans show sixteen (16) type 'S3' suite designations." Meredith contended that Lucas Electrical "did not include any costs within his bid for devices in any 'S3' suites." Meredith's 25 June 2001 letter included a Contract Disputes Act (CDA) certification. (R4, tab 12)

35. The CO's 31 July 2001 decision denied Meredith's 16 April 2001 claim (for \$99,918 and 30 days). The decision acknowledges that the S3 suites are omitted from electrical drawings E401 and E402. The decision contends, however, that other electrical drawings such as E118, E124, E126, E127, E132 and E133 all show wiring going into S3 suites, and that the Electrical Panel Schedules, E604 through E614 contain instructions for wiring to S3 suites. The decision argues that the specifications indicate that the electrical systems on each floor of each wing are to be replaced, and "[t]his would, by necessity, include type S3 suites since they are located in each of the four wings in questions [sic]." (R4, tab 13)

36. The CO issued a second decision on Meredith's revised claim (25 June 2001) by letter dated 14 September 2001. The decision said that the CO was not aware that

Meredith had submitted a revised claim when the earlier decision was issued. The 14 September 2001 decision denied Meredith's claim for adjustment for wiring 16 S3 suites. It explained "[a]lthough the cover sheet for the architectural drawings may indicate 16 type S3 suites[,] when the actual work was performed only 12 type S3 suites were wired." The 14 September 2001 decision incorporated the bases of the 31 July 2001 decision in denying Meredith's claim. (R4, tab 15)

37. Meredith timely appealed the CO's 14 September 2001 decision by notice dated 26 October 2001.

DECISION

Meredith, on behalf of its electrical subcontractor Lucas Electrical, seeks the costs of wiring 16 S3 suites under a contract to renovate the SP-29 Building at the Naval Station in Norfolk, Virginia. Meredith correctly identified the issue in this appeal: should it have discovered the omission of the electrical (or wiring) plan for S3 suites, and should it have brought the omission to the Government's attention prior to bidding on the project. It acknowledges that if the Board answers "yes" to these two questions, then it is not entitled to recover from the Government. (App. br. at 1)

The answer to these questions depend on whether the omission constitutes a patent or latent ambiguity. An "obvious omission, inconsistency, or discrepancy of significance" is a patent ambiguity, and a bidder "must consult the Government's representatives if he intends to bridge the crevasse in his own favor." *Beacon Constr. Co. v. United States*, 314 F.2d 501, 504 (Ct. Cl. 1963). Only if we decide that the ambiguity is not patent would we reach the question of whether the contractor's interpretation was reasonable. The existence of a patent ambiguity triggers a bidder's duty to inquire, and the reasonableness of its interpretation becomes irrelevant. *Newsom v. United States*, 676 F.2d 647 (Ct. Cl. 1982).

We have said that where there is a patent ambiguity, a contractor has a legal obligation to "seek clarification before he unilaterally makes his own determination as to the meaning of the ambiguous language, drawing or symbols." *Metric Construction Company*, ASBCA No. 31750, 86-3 BCA ¶ 19,034 at 96,138; *Master Mechanical Contractors, Inc.*, ASBCA No. 33304, 87-2 BCA ¶ 19,799 (contractor not entitled to recover when it did not raise patent omission of the piping from riser diagrams necessary for latrines to provide working indoor plumbing).

In this case, the drawing cover sheet (drawing sheet G001) tells the bidder that there were going to be six types of suites, including 16 S3 suites, in the building (finding 7). The reflected ceiling plan, architectural drawing A403, shows various electrical fixtures to be installed in the ceiling of S3 suites and directs the reader to go to the electrical plans for further details (finding 8). When one goes to the "ENLARGED ELECTRICAL SUITE

PLANS” -- electrical drawings E401 and E402 -- one finds the electrical wiring plan for S1, S1A, S1B, S2 and S6 suites on drawing E401, and the electrical wiring plan for S4, S4A and S5 suites on drawing E402 (finding 9). We conclude that it should have been immediately obvious to the bidder that the electrical wiring plan for S3 suites had been omitted.

Moreover, the “ELECTRICAL PANEL SCHEDULE” or panel schedules on electrical drawings E604 through E614 should have alerted the bidder that S3 suites should be wired. We have found that each of the 12 S3 suites shown on electrical drawings E118, E124, E125, E126, E127, E132 and E133 refers to a specific panel schedule. The S3 panel schedule specifies the wire size and the various types of receptacles (*i.e.*, lighting, kitchen, bath and bedroom receptacles) for that suite. Without a wiring plan for the S3 suites, the contractor would be left with no instructions with respect to how the various S3 suite receptacles were to be wired to the ceiling junction boxes. And, leaving S3 suites unfinished, would be contrary to the express intent of the contract to demolish the interior of Building SP-29 completely, and to replace the electrical systems therein. (Findings 2, 11, 13)

We have found that Meredith’s failure to check the electrical drawings and Lucas Electrical’s failure to check architectural drawing A403 both contributed to omitting the costs of wiring S3 suites in Meredith’s bid (findings 14, 18, 20). As between the prime contractor and the Government, the prime contractor is responsible for determining the scope of the work required and the amount of its bid. Where the contract read as a whole required the performance of certain work, the subcontractor’s failure to include the work in its bid to the prime contractor does not excuse the work from being performed. *R. A. Burch Construction Co.*, ASBCA No. 39017, 90-1 BCA ¶ 22,599.

We conclude that the omission of the electrical plan for S3 suites on drawings E401 and E402 constitutes a patent ambiguity, and Lucas Electrical should have alerted Meredith to the omission, and Meredith, in turn, and in any event on its own, should have sought clarification from the Government.

CONCLUSION

Because the omission of the electrical wiring plan for the S3 suites was obvious, because leaving S3 suites without wiring was inconsistent with the express contract requirement to demolish completely the interior of the renovated building and to replace its electrical systems, and because Meredith failed to seek clarification of the discrepancy in the contract documents relating to the wiring of S3 suites, we hold that it is not entitled to the costs of wiring the 12 S3 suites.

This appeal is, therefore, denied.

Dated: 31 January 2003

PETER D. TING
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

NOTES

- ¹ There are reflected ceiling plans for each of the six types of suite. Architectural drawing A405 is the reflected ceiling plan for S4 and S4C suites. Architectural drawing A407 is the reflected ceiling plan for S5 and S6 suites. Their legends make the same referrals to see the electrical drawings as in the case of drawing A403.
- ² The “A”, “B”, and “C” designations are used to distinguish minor variations within a type of suite (Rogers dep., ex. 6 at 12).
- ³ Panels or “panelboards” are “electric closets.” They are “spread out through the [SP-29] building” (Guidt dep., ex. 3 at 32).
- ⁴ A “receptacle” is an electrical outlet into which various electrical devices are plugged (Lucas dep., ex. 1 at 73).
- ⁵ The junction boxes in the suites are located in the ceiling (Lucas dep., ex. 1 at 77).

⁶ Of the 12 S3 suites, the Board has not been able to locate the panel schedule for Room 229 (schedule L2BB) and Room 237 (schedule L2BA) in drawings E604 through E614.

⁷ The types of fixtures required for the S3 suites are shown in architectural drawing A403, the reflected ceiling plan for S1, S2 and S3 suites as well as the Electrical Panel Schedules.

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. 53590, Appeal of W. B. Meredith II, Inc., rendered in conformance with the Board's Charter.

Dated:

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