

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
)  
E. L. Hamm & Associates, Inc. ) ASBCA Nos. 51085, 51469, 51470,  
) 51471, 51472, 51837,  
Under Contract No. N62470-90-D-4455 ) 51970

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OPINION BY ADMINISTRATIVE JUDGE JAMES

These appeals arise from the contracting officer's (CO) final decisions denying (ASBCA Nos. 51085, 51469, 51470, 51471, 51472, 51970), and deemed denial of (ASBCA No. 51837), E. L. Hamm & Associates, Inc.'s (Hamm) claims 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 filed post-hearing and reply briefs. The Board decides entitlement only (tr. 14).

FINDINGS OF FACT

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 approximately 2,538 family housing units (R4, tab 1 at 1, B-2, B-3, J-C8-1 to -12, 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 set forth “prorated award quantities (10 months)” for the line items (CLIN). (R4, tab 1 at B-3)

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

5. CLIN 0001’s sub-line-items (SLIN), each of which had a unit price, included “routine,” “urgent,” “emergency” and “emergency (after hours)” service calls, custodial service for the housing office and community center, HVAC preventive maintenance (PM), grounds maintenance, playground maintenance/repair, and garbage/ refuse disposal. For pricing purposes, the “Schedule” of SLINs designated the following “units” of work:

<u>SLINs</u>	<u>Unit of Work</u>
0001AA to -AB Service calls	MO (month)
0001AC to -AY Custodial services	SF (square foot) or
" "	EA (each)
0001AZ to -BC HVAC PM	"
0001BD General mowing	AC (acre)
0001BE Prestige mowing	"
0001BF Maintain wooded area	"
0001BG Policing	"
0001BH Edging/vegetation removal	LF (linear foot)
0001BJ Raking	AC
0001BK Playground maintenance/repair	MO
0001BM Garbage/refuse disposal	EA
0001BN Bulk item disposal	WK (week)

(R4, tab 1, § B, schedule pages 1-4, § C-7 at C-10; tr. 93)

6. CLIN 0002, IQ services, had unit-priced SLINs for change of occupancy, interior painting for housing units, custodial services for dwelling units, grounds maintenance services, replacement of appliances, screens, doors, glass, built-in equipment, walls and partitions, floors and coverings, reglazing and refinishing porcelain and fiberglass items, venetian blinds, plumbing, siding and shingles, backlog service, chain link and wooden fences. CLIN 0003 repair work had three SLINs priced at Service Contract Act, Davis

Bacon Act, and the contractor's composite labor rates. (R4, tab 1, § B, schedule pages 5-13)

7. The contract incorporated the following relevant schedule sections:

B.3 52.216-10026 MAXIMUM QUANTITIES (NAVFAC)  
(Dec 1991)

As referred to in paragraph c. of the COMBINATION FIRM FIXED-PRICE/INDEFINITE QUANTITY CONTRACT Clause of Section H, the minimum guarantee of work is the fixed-price portion of the contract. The maximum dollar value of the contract is the total dollar value of the Fixed Price and Indefinite Quantity Items. The maximum shall not be exceeded except as may be provided by formal modification to the contract.

B.4 CONTRACT SUBLINE ITEMS

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c. The Schedule of Firm Fixed Price Work and the Schedule of Indefinite Quantity Work will be used as the basis of deductions pursuant to the "CONSEQUENCES OF CONTRACTOR'S FAILURE TO PERFORM REQUIRED SERVICES" clause, Section E.

B.5 BIDDING UNIT PRICES FOR LABOR

a. A portion of the work included in the scope of this contract cannot be identified in advance in sufficient detail to be included in the Firm Fixed Price portion of the contract or as a Unit Priced Task in the Indefinite Quantity Portion of the contract. Labor for this work will be ordered under the "SPECIFIC MAINTENANCE AND REPAIR WORK" clause in Section C and paid for based on the . . . (composite labor rate) bid by the Contractor . . . .

....

C.6 WORK CONTROL

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c. Work Control Forms: Task Verification Form (TVF): This form will be used to issue service call work. TVF's [sic] . . . will be issued . . . during the governments [sic] regular working hours. The Contractor upon completion of work shall fill-in [sic] the appropriate information on the TVF and enter that information into the computer system daily. The Contractor shall provide to the [CO], the next working day at 3:00 p.m. two copies of the TVF . . . .

C.7 SERVICE CALLS (CONTRACT REQUIREMENTS)

. . . Service calls will be classified as (1) Emergency, (2) Urgent, and (3) Routine. . . .

a. Service Call Issuance: The Contractor will be issued service calls 24 hours per day seven days per week. . . .

. . . .

c. Emergency Service Calls

. . . .

(5) False Service Calls/Canceled Calls. When the Contractor responds to a service call and determines that it is a duplicate call or that no repairs were required he shall notate on the TVF it is a false service call/canceled call. Should the Government cancel the call prior to the Contractor responding, it is not considered a false call and is canceled with no cost to the Government.

(6) Tenant Not At Home. . . . If the tenant is not at home during a response to an emergency call Monday through Friday between 0730 - 1600, excluding holidays, the Contractor shall notify the Project Housing Manager [PHM], within 30 minutes of arrival at the housing unit. The [PHM] will gain access to the unit for the Contractor. If the tenant is not at home outside of the time frame discussed above, including holidays, the Contractor shall notify the [PWC] . . . within 30 minutes of arrival at the housing unit. Government personnel will gain access to the unit for the Contractor. The Contractor shall document on the TVF the time the

Government personnel were notified, when they arrived and have them sign a copy of a blank TVF. The Contractor shall attach this to the TVF issued by the Government. If the tenant is not at home during a response to a routine or urgent service call the Contractor shall place a completed tenant “not at home card” (Attachment J-C13) on the front door knob. Also, the Contractor shall supply a copy to the Housing Office, [CO] and Facility Maintenance History Files. The Contractor shall retain the TVF until the service call and/or [PM] has been rescheduled by the tenant. If the service call and/or PM is not rescheduled within ten (10) working days from the date on the [“]NOT HOME CARD” or the tenant fails to keep the rescheduled appointment, the Contractor shall note the TVF as a TENANT NOT HOME. The Contractor should anticipate rescheduling of approximately 25 percent of service calls and/or PMs and take this into consideration in preparing his bid. NOTE: No payment for false calls, tenant not at home or canceled service calls and/or PMs.

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E.7 52.249.10113 CONSEQUENCES OF CONTRACTOR’S FAILURE TO PERFORM REQUIRED SERVICES (NAVFAC) (MAR 1989)

a. The Contractor will be held to the full performance of the contract. The Government will deduct from the contractor’s invoice or otherwise withhold payment for any items of nonconforming service as specified below.

(1) The Government may apply statistically extrapolated inspection techniques to either assess the contractor’s performance or determine the amount of payment due or both. The defect rate for the purpose of assessing the contractor’s performance and to determine the amount of payment due will be calculated by deducting an adjustment factor, shown in Section J, from the observed defect rate . . . . The defect rate will be extrapolated to the total population of work items to determine performance and payment due, and adjustments will be made for work satisfactorily performed . . .

(2) . . . A contract requirement may be determined to be partially complete if the Contractor satisfactorily completes

some, but not all, of the work requirements. In those cases, deductions may be taken from the Contractor's invoice . . . .

b. The Government will give the Contractor written notice of deficiencies by copies of the Inspector's Daily Reports or otherwise prior to assessing liquidated damages or deducting for nonperformed or unsatisfactory work.

Therefore:

(1) In the case of nonperformed work, the Government:

(a) shall deduct from the Contractor's invoice all amounts associated with such nonperformed work at the prices set out in Schedule or provided by other provisions of this contract, unless the Contractor is permitted or required to perform pursuant to (b) below and satisfactorily completes the work: [sic]

(b) may at its option, afford the Contractor an opportunity to perform the nonperformed work within a reasonable period subject to the discretion of the [CO], but in no event longer than 6 hours in the case of daily services, or 24 hours in the case of all other services, of the notice to the Contractor of such nonperformance, at no additional cost to the Government . . . .

c. Should the Government elect options b(1)(a), b(1)(b) . . . above, the Government will also assess, as liquidated damages, an additional 10% of an amount associated solely for observed defects . . . to compensate the Government for administrative costs and other expenses resulting from the nonperformance or unsatisfactory performance . . . .

. . . .

H.19 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 and include all work except that identified as Indefinite Quantity. The fixed price quantities shown in the Schedule are considered to be accurate estimates for this contract period.

b. (1) . . . The quantities of supplies and services specified in the Schedule as Indefinite Quantity are estimates only and are not purchased by the contract.

(2) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause . . . . The minimum guarantee of work to be ordered is \$530,326.00.

....

[§ H.19 had no “paragraph c.”]

....

I.11 FAR 52.252-2, CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

....

52.215-33 ORDER OF PRECEDENCE (JAN 1986)

....

52.249-2 TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (APR 1984)

(All underlining in original.) (R4, tab 1 at B-2, -3, E-4, -5, H-7, I-9, -19, -20, -22, tab 10 at C-10, -10a, tab 11 at C-9, C-12, tab 12 at C-12a)

8. Contract § C.33 required Hamm to maintain “facility history files” containing PM reports and service call TVF forms that were to be filed within three work days of completed inspection or work, available for the CO’s review during regular working hours, and returned to the Government on the last day of contract performance prior to final payment (R4, tab 1 at C-84, tab 10 at C-84).

9. Due to a GAO protest, contract performance was suspended from 4 November 1993 to 1 April 1994 (R4, tabs 14-15). The Navy’s 6 December 1993 agency report on

the November 1993 GAO protest stated: “The Agency included both a prorated fixed price amount and an indefinite quantity amount. As in all combination firm-fixed price and indefinite quantity contracts, the minimum guarantee for the work is the firm-fixed price portion of the contract” (ex. A-17 at 8).

10. Bilateral Modification No. P00002 to the contract, executed 30 March 1994, changed the contract number to N62470-90-D-4455, changed the base period to 1 April to 30 September 1994, changed CLIN 0001’s firm fixed-price to \$1,379,049.56, and the combined estimated price of CLINs 0002 and 0003 to \$1,764,654.52 (R4, tab 15).

11. By unilateral Modification No. P00007, on 30 September 1994 the CO exercised the Government’s option to extend the contract’s term by one year, ending 30 September 1995, increased CLIN 0001’s firm fixed-price by \$2,622,661.94, and CLINs 0002 and 0003’s combined estimated price by \$3,420,813.04 (R4, tab 20 at 1-2).

12. By unilateral Modification No. P00018, on 28 September 1995 the CO exercised the Government’s option to extend the contract’s term by nine months, ending 30 June 1996, increased CLIN 0001’s firm fixed-price by \$1,959,892.68, and increased CLINs 0002 and 0003’s combined estimated price by \$2,515,803.08 (R4, tab 31 at 1-2).

13. When Hamm completed all contract work by August 1996 (ex. A-8 at 2), the amended CLIN 0001 price was \$6,084,689 (R4, tabs 33-34, 43). Hamm’s 32 invoices submitted for May 1994 through August 1996 included approximately \$6,089,412 for CLIN 0001 and \$2,150,622 for CLINs 0002/0003, of which Hamm was paid \$5,028,467 and \$1,838,138, respectively, totaling \$6,866,605 (R4, tab 140, ex. 36; tab 150).

14. On 12 June 1997 Hamm submitted 17 claims totaling \$2,423,999.80 to the CO (R4, tabs 105-10, 140 exs. 39-43, 46-47, 54A, 58-59, 61-62, 64-65, 69, 72, 74, 80-81, 87).

15. On 25 August 1997, the CO issued unilateral Modification No. P00031, to decrease CLIN 0001’s price by \$852,828.94, citing contract Attachment J-C24, to reflect the actual number of service calls issued during the contract term (R4, tab 44).

16. The Defense Contract Audit Agency’s (DCAA) July 1998 audit report recalculated the Navy’s Modification P00031 reduction as \$716,237, based on audited incurred costs of labor, overhead and materials, multiplied by the shortfall of service calls, to produce what DCAA called the costs Hamm “saved” (R4, tab 119 at 4-5, 7-8).

17. After Hamm withdrew claim Nos. 2 and 7, the CO denied, or was deemed to deny, the 15 other claims in 1997 and 1998 (R4, tabs 114-15, 140 exs. 48-51, 95, 97).



18. In May 1999 the Board consolidated Hamm’s 15 timely appeals under the contract, ASBCA Nos. 51085, 51469, 51470, 51471, 51472, 51735, 51736, 51770, 51771, 51772, 51836, 51837, 51838, 51864, and 51970.

19. On 26 September 2001: (a) the parties agreed that the CO would modify the contract to reduce the amount stated in Modification No. P00031 to \$716,237.00 (compl. & answer, ¶ 34<sup>1</sup>; compl., “Exhibit A”), and (b) Hamm agreed to reduce its claim No. 14 from \$435,531.70 to \$298,939.70 (compl. & answer, ¶ 35). On 26 September and 6 December 2001 the parties settled claim Nos. 1, 4, 5, 6, 9, 12 and 13 for \$641,300.42 (compl. & answer, ¶ 27), of which approximately \$468,150 was for CLIN 0001 work (R4, tab 140). Thus, the Board dismissed ASBCA Nos. 51735, 51736, 51770, 51771, 51772 and 51836 on 27 December 2001. ASBCA Nos. 51838 and 51864 are decided in a separate opinion. The remaining appeals, and their claimed amounts, decided herein are:

<u>ASBCA No.</u>	<u>Claim No. &amp; Description</u>	<u>Amount</u>
51085	3 - Disproportionate non-routine service calls	\$ 64,740.14
51469	14 - Unpaid invoices 26 and 27, fixed priced work	298,939.70
51470	15 - Unpaid invoices 26-29, IQ work	195,232.31
51471	16 - Unpaid invoice 30, IQ work	52,701.64
51472	17 - Unpaid invoice 31, IQ work	3,936.17
	Less: “for cause” deductions re claims 14-17 agreed to by parties	(47,826.00)
	Subtotal:	615,549.96
	“Rescission” of Mod. No. P00031	
716,237.00	(in lieu of \$615,549.96 for claims 3, 14-17)	
51837	11 - Unilateral deductions for reduced quantity of fixed-price work	470,538.74
51970	Proposal preparation costs	75,074.93

Further Findings on ASBCA No. 51085  
Disproportionate Non-Routine Service Calls

20. Solicitation amendment No. 4 of 7 May 1991, Attachment J-C24, set forth: (a) 2,931 average monthly service calls in 1989, including 1,684 “routine,” 560 “urgent,” 565 “emergency” and 122 “emergency/after hours” service calls (122 is 4.16% of 2,931); (b) 35,172 total annual service calls, of which 57.45% were routine and 42.55% were non-routine; and (c) the following notes:

NOTE: This information is provided to assist the Contractor in preparing his offer for Service Call work. Actual service call tickets *issued* to the previous Contractor are available for review. This is historical information only. The actual number of calls *issued* may vary  $\pm$  10 percent. The  $\pm$  10 percent does not apply to a specific trade group, but the total annual calls *performed*. If the actual number of calls *issued* differ [sic] by more than  $\pm$  10 percent for a contract term, an equitable adjustment in favor of the Government/or the Contractor will be negotiated upon demand by either party, to the extent that it excess [sic] the stated variance.

NOTE: No adjustment shall be made if the actual number of service calls *completed* is 90% - 110% of the annual estimated quantity. [Emphases added.]

(R4, tab 1 at J-C24-1, -2)

21. Solicitation amendment No. 9, dated 25 August 1992, added the following note at the end of Attachment J-C24: “NOTE: Historical data for False Call/Cancelled [sic] Calls average 180 calls per month.” Amendment No. 12, dated 26 April 1993, added the following notes to Attachment J-C24 preceding the earlier unnumbered notes:

NOTE: (1) By 1 October 1993, All Quarters in the Ben Moreell Housing Project will be closed. Only minimal interior/exterior maintenance services may be required.

NOTE: (2) The Government installed 900 new refrigerators, 299 new ranges and 586 new dishwashers throughout the various housing projects.

NOTE: (3) The Government anticipates the impact of these unforeseen changes to reduce the estimated quantity of service calls to approximately 30,000 annually.

(R4, tab 10 at J-C24-1, -1a, tab 13 at J-C24-1)

22. Prior to submitting its offers for the contract, Hamm reviewed the work records of the Navy PWC and of predecessor contractors SEEMA and J&J, which were more current than the foregoing 1989 data (tr. 49-50). Hamm’s technical proposal for service calls offered “to perform approximately 35,000 service calls annually, with approximately 4% of those requiring after hours response” and stated:

TASK	QUANTITY	UNIT	TIME HRS	TOTAL HRS
SERVICE CALLS	33,709	EA	1.332	44,900
SVC CALL AFTER HRS	1,463	EA	2.0	2,926

Hamm's foregoing totals were: 35,172 47,826  
(R4, tab 175 at 17, 26).

23. The contract's monthly price of SLIN 0001AA routine, urgent and emergency service calls was \$116,346.48, and of SLIN 0001AB emergency, after hours, service calls was \$6,651.30 (which was 5.41% of the price of all service calls) (R4, tab 1, § B; tab 20 at 3, tab 31 at 3). Hamm's proposed average unit service call price was not stated in its offer, but it can be calculated as \$41.96 ( $\$116,346.48 + \$6,651.30 \div (35,172 \div 12)$ ).

24. Hamm's 30 July 1996 certified claim to the CO alleged \$83,564.25 in increased costs for the "disproportionate number of emergency, urgent or priority (or non-routine) service calls" and requested a final decision (R4, tab 140, ex. 53).

25. On 12 June 1997 Hamm amended its claim for disproportionate non-routine service calls, designated Claim No. 3, to \$81,872.22 based on the following alleged data:

<u>Period</u>	<u>% Non-Routine Calls</u>			<u>Actual No. Compl Calls</u>	<u>Additional Non-Routine Calls</u>
	<u>Contract</u>	<u>Actual</u>	<u>Increase</u>		
4/94-9/94	42.8%	53.6%	13.5%	10,001	1,350
10/94-9/95	42.8%	57.1%	14.3%	18,959	2,711
10/95-12/95	42.8%	59.7%	16.9%	12,176	<u>2,058</u>
			Calls	[41,136]	6,119

Hamm's estimated .5 hours incurred per non-routine call, times 6,119 alleged additional calls, times \$26.76 per hour, resulted in \$81,872.22. (R4, tab 140, ex. 54A)

26. We find that: (a) based on the solicitation's revised estimate of 30,000 annual service calls (finding 21), in the 21-month period April 1994 through December 1995, and the historic 42.55 percent of non-routine calls (finding 20), Hamm could anticipate 22,339 non-routine calls ( $21 \div 12 \times 30,000 \times .4255$ ); and (b) Hamm's alleged 23,455 "actual" non-routine calls completed (alleged "actual" % times "Actual No." per period), which allegations were not substantiated by record evidence, exceeded the solicitation's estimate by 1,106 calls ( $23,445 - 22,339$ ).

27. The CO's 22 August 1997 final decision denied Hamm's 12 June 1997 claim No. 3 for allegedly disproportionate number of non-routine service calls, finding that in no

instance did the “service calls ordered” exceed 110%, and in nearly all instances such service calls were less than 90%, of the estimated number of service calls stated in Attachment J-C24, and thus the Navy was entitled to a downward equitable adjustment (R4, tab 114). That decision was appealed timely and docketed as ASBCA No. 51085.

### DECISION, ASBCA No. 51085

Hamm argues that it relied on the solicitation’s proportion of 42.8% non-routine service calls; it actually performed 53.6%, 57.1%, and 59.7% non-routine service calls in the three contract periods, respectively (finding 25); and thus it is entitled to a price increase for the “disproportionate” amount of non-routine service calls. Respondent argues that Hamm did not prove that it relied on the proportion of routine and non-routine service calls in the J-C24 data in proposing prices for SLIN 0001AA and SLIN 0001AB, and did not substantiate the allegedly “actual” number of non-routine service calls it performed in each of the three periods.

Hamm proposed to perform 35,172 annual service calls – not 30,000 as respondent re-estimated (findings 21-22). Neither Hamm’s proposal nor the contract stated separate prices for routine, urgent and emergency service calls (findings 22-23). The record does not show that Hamm relied on an alleged 42.8% proportion (or the solicitation’s 42.55% proportion) of non-routine service calls, but rather on the solicitation’s 35,172 total calls in 1989 and its 4.16% proportion of emergency/after hours calls (findings 20, 22).

Hamm alleged, but did not substantiate, its “actual” percentages of non-routine calls, and the resulting 23,455 “actual” number of non-routine service calls during the 21 months in issue (findings 25-26). Allegations are not proof of disputed facts. *See James Reeves Contractor, Inc.*, ASBCA No. 33744, 88-1 BCA ¶ 20,426 at 103,317. Moreover, Hamm’s alleged but unproven “actual” non-routine calls it completed did not exceed the contract estimate by 6,119 calls, as it alleged (finding 25), but rather by 1,106 calls, which excess was less than 10% of the 22,339 non-routine calls Hamm could anticipate (finding 26) and does not justify an adjustment under contract Attachment J-C24 (finding 20).

We deny the appeal in ASBCA No. 51085. The matter is returned to the parties for resolution of quantum.

### Further Findings on ASBCA Nos. 51469, 51470, 51471 and 51472 Unpaid Invoice Nos. 26-31; “Rescission” of Modification No. P00031

28. On 7 May 1991, by solicitation amendment No. 4, §§ B.3 and H.18 provided that the minimum guaranteed work was \$530,326.00 (R4, tab 5 at B-3, H-7; tr. 50). On 6 September 1991 solicitation amendment No. 8 renumbered § H.18 as § H.19 (R4, tab 9 at H-7). On 25 August 1992 solicitation amendment No. 9 revised § B.3 to state that “the minimum guarantee of work is the firm fixed price portion of the contract” (R4, tab 10 at

B-2; tr. 50). Before contract award no offeror inquired about the conflict between the guaranteed minimum work provisions in §§ B.3 and H.19. The Navy says that such contradiction arose by neglecting to delete the \$530,326 from § H.19 b.(2) (Gov' t br. at 8). We find that the contract's firm fixed price portion was the "minimum guarantee" of the IQ work.

29. Contract Attachment J-G2, ¶ 5, stated: "A single invoice shall be submitted for 1/12 of the Contract Line Item 0001 and Indefinite Quantity work after completion of the first month's performance and once monthly thereafter" (R4, tab 1 at J-G2-2).

30. Hamm interpreted the contract to entitle it to be paid a fixed monthly amount for the firm fixed price CLIN 0001 work, whatever might be the volume of services performed under the CLIN 0001 SLINs (tr. 48, 66-68, 156-59, 165).

31. Between 8 March 1994 and 1 February 1996, 14 contract modifications stated the exact monthly amount to be invoiced for CLIN 0001, which was one-twelfth of the then current, amended, CLIN 0001 price (R4, tabs 15-17, 19-21, 23-28, 30-31, 33).

32. Navy contract administrator Kenneth Sims' 22 July 1996 letter to Hamm requested a proposal for equitable adjustment for reduced service calls issued, based on 67,500 service calls estimated for the 27 months, 41,136 "actual completed" service calls, and a 19,614 service call difference (apparently  $(67,500 \times 90\%) - 41,136$ ) (R4, tab 88).

33. Hamm's 31 July 1996 letter to Mr. Sims said that "there is a mistake in your numbers that we cannot reconcile and require your clarification . . . . As you are also aware, the contract states that the firm fixed price portion of the contract is the guaranteed minimum, which would apply directly to your request for a proposal" (R4, tab 92).

34. Mr. Sims' 3 October 1996 letter to Hamm stated that the Navy would process Hamm's invoices Nos. 26-29 only after Hamm submitted a proposal for equitable adjustment on reduced service calls (R4, tab 100). Hamm submitted no such proposal; the Navy did not pay Hamm's invoices Nos. 26-32 (R4, tab 140, ex. 36).

35. Unilateral Modification No. P00031, of 25 August 1997, stated: "In accordance with the workload adjustment provision as indicated in Attachment J-C24-1 [sic] of the contract, this modification is issued to decrease the firm-fixed portion of the contract to reflect the actual number of service calls issued during the contract term. The decrease of \$852,828.94 is calculated as follows:

SERVICE	HISTORICAL DATA	ACTUAL SERVICE	NUMBER OF
	(BASED ON 30,000 CALLS)	CALLS ISSUED	CALLS BELOW 90%
Base Period	15,000	10,304	3,196

First Option	30,000	18,969	8,031
Second Option	22,500	12,156	8,094
TOTAL SERVICE CALLS LESS THAN 90% OF HISTORICAL DATA			19,321
			19,321 SERVICE CALLS X \$44.14 = \$852,828.94"

(R4, tab 44)

36. According to Hamm, (a) Modification No. P00031's comparison of actual "completed" service calls to estimated "issued" service calls inflated the price reduction, because more service calls were issued than were completed (tr. 90-92); (b) the CO derived the \$44.14 unit service call amount from an unidentified Hamm proposal, not from any actual costs Hamm saved due to the allegedly unperformed work; (c) the Navy's alleged reductions in service calls, PM, and other firm fixed-price work had no effect on Hamm's staffing and did not permit it to realize any actual savings in labor costs or any measurable savings in materials costs, because Hamm had to have laborers on standby throughout the month because service calls could be issued all day every day all month (tr. 81-82, 87, 159-60, 169-72; exs. A-7, -8), and (d) Hamm performed *exterior* PM and service calls on housing units to which it could not gain entry to perform the *interior* PM or service call work, and hence could not report as "completed" (tr. 74-75, 234-35).

37. In four final decision letters dated 28 January 1998, the CO stated to Hamm that the amount due to the Government pursuant to Modification No. P00031 exceeded the amounts of Hamm's invoices Nos. 26 through 30 (R4, tab 140, exs. 48-51).

#### Positions of the Parties

Hamm argues that (1) based on the holding in *E. L. Hamm & Associates, Inc.*, ASBCA No. 48601, 01-1 BCA ¶ 31,260, and the doctrines of *res judicata* and collateral estoppel, the guaranteed minimum work was the fixed-price portion of the contract; (2) Attachment J-C24 ("the J-C24 clause") did not provide for adjusting the fixed-price payment for service calls and was an unauthorized deviation from the FAR 52.211-16 VARIATION IN QUANTITY clause; (3) the retroactive, unilateral Modification No. P00031 price reduction was a breach of contract; (4) the Navy miscalculated the amounts in Modification No. P00031; and (5) Hamm is entitled to payment of \$6,087,950.2387 for the fixed-price portion of the contract.

Respondent argues that (a) the J-C24 clause is valid and enforceable; (b) the contract's minimum guarantee provision applies only to the base period and does not nullify other contract clauses; (c) respondent satisfied that minimum guarantee provision by paying Hamm during the course of the contract much more than the \$1,379,049.56 fixed price of CLIN 0001 set forth in Modification No. P00002 for the base period; (d) the J-C24 clause cannot support Hamm's claim for allegedly disproportionate non-routine service calls, but be invalid with respect to respondent's deductions in Modification No.

P00031; and (e) alternatively, the contract's Termination for the Convenience of the Government clause justified the Modification No. P00031 price reduction.

DECISION ON ASBCA Nos. 51469, 51470, 51471, 51472, Unpaid Invoices

It is undisputed that the Navy did not pay Hamm's invoices Nos. 26 through 32. Whether Hamm is entitled to such payments turns on whether the Navy was entitled to reduce CLIN 0001's firm fixed-price to reflect an allegedly reduced number of service calls under SLINs 0001AA and 0001AB, by virtue of the J-C24 clause, which reduction exceeded the amount of the unpaid invoices.

These four appeals present the following legal issues:<sup>2</sup> (1) whether the J-C24 clause is valid and enforceable; (2) whether the J-C24 clause conflicted with contract § B.3's guaranteed minimum fixed-price work provision, or was an unauthorized deviation from the FAR 52.211-16 VARIATION IN QUANTITY clause; and (3) whether the Navy could invoke the J-C24 clause retroactively, after Hamm had completed contract performance in August 1996.

Hamm argues that the J-C24 clause only provided historical service call information to assist offerors in pricing their proposals. This interpretation would render meaningless or surplusage the provision in Attachment J-C24 –

If the actual number of calls *issued* differ [sic] by more than ± 10 percent for a contract term, an equitable adjustment in favor of the Government/or the Contractor will be negotiated upon demand by either party, to the extent that it excess [sic] the stated variance.

NOTE: No adjustment shall be made if the actual number of service calls *completed* is 90% - 110% of the annual estimated quantity.

(Finding 20)

A contract must be construed as a whole to give meaning to all of its provisions. *See Julius Goldman's Egg City v. United States*, 697 F.2d 1051, 1057 (Fed. Cir. 1983). An interpretation that renders meaningless some provision is not favored. *See United Pacific Ins. Co. v. United States*, 497 F.2d 1402, 1405, 204 Ct. Cl. 686, 692 (1974). We reject Hamm's interpretation. Hamm also argues that the J-C24 clause was an unauthorized deviation from the FAR 52.211-16 VARIATION IN QUANTITY clause, which FAR 11.703(a) prescribes for supply and service contracts involving the furnishing of supplies. The FAR 52.211-16 clause sets permissible percentages of increases and decreases in quantities to be accepted if such variations arose from loading, shipping or packing conditions or

allowances in manufacturing processes, and provides no price adjustment for such variations. Hamm's contract was a service contract whose fixed-price CLIN 0001 and its SLINs did not require Hamm to furnish any supplies, but solely to perform services (finding 5). FAR 1.401(b) defines one deviation as the "omission of any solicitation provision or contract clause when its prescription requires its use." We conclude that the FAR 52.211-16 VARIATION IN QUANTITY clause was not prescribed for use in Hamm's contract, and the J-C24 clause was valid and enforceable.

The Navy issued Modification No. P00031 on 25 August 1997, over a year after Hamm completed contract performance in August 1996 (findings 13, 35). Hamm argues that the Navy had no contractual right retroactively and unilaterally to reduce the price of CLIN 0001, because § B.3 provided that "the minimum guarantee of work is the firm fixed-price portion of the contract." Hamm confuses the legal principles with respect to the termination of an IQ contract with the contract provisions for price adjustment of the CLIN 0001 fixed-price portion of the contract. It is true that a valid convenience termination of a portion of an IQ contract must be done prospectively, not retroactively. *See Maxima Corp. v. United States*, 847 F.2d 1549, 1557 (Fed. Cir. 1988). But the Navy did not terminate any part of the IQ line items in the contract, so legal precedents limiting termination of a portion of an IQ contract are inapplicable to these appeals.

Hamm's argument treats the CLIN 0001 fixed-price portion of the contract as impervious to unilateral reduction. Such argument is unsound. In a combination fixed-price/IQ Navy contract for obstetrics and gynecology services, the Board rejected the contractor's claim seeking full payment for CLIN 0001AA fixed price weekday services that established the minimum work guarantee, because the contract provided that the contractor would be paid only for those hours actually applied to the contract services. *See Coastal Government Services, Inc.*, ASBCA No. 49625, 97-1 BCA ¶ 28,888 at 144,049-50; *accord, Coastal Government Services, Inc.*, ASBCA No. 49621, 02-1 BCA ¶ 31,666 at 156,480-81.

It remains to decide whether the J-C24 clause forbade retroactive price reductions. The J-C24 clause quoted above gave each party the right to "demand" the negotiation of an equitable adjustment of the monthly service call price in SLINs 0001AA and -AB if the actual number of service calls issued differed by more than 10% of the specified number "for a contract term" (finding 20). That clause did not require such demand be made before passage of the contract term or terms. In any event, the Navy's 22 July 1996 request for a price proposal due to reduction of the number of service calls issued to Hamm (finding 32) was prior to passage of the final contract term.

With respect to the propriety of the \$852,828.94 amount in Modification No. P00031, on 26 September 2001 the parties agreed that the CO would modify the contract to reduce such amount to \$716,237.00 (finding 19), adopting the DCAA's July 1998 recalculation of the Modification No. P00031 reduction, based on audited incurred costs of



labor, overhead and materials, multiplied by the shortfall of service calls, to produce what DCAA called the costs Hamm “saved” (finding 17). We need not decide whether any further adjustments of such calculation are appropriate, *e.g.*, the quantity or unit price of service calls. Those are quantum issues to be resolved by the parties on remand.

We hold that the CO had the right to demand a price adjustment for SLINs 0001AA and -AB on account of the reduced number of service calls issued to Hamm during the three terms of the contract. We deny these appeals.

Further Findings on ASBCA No. 51837  
Deductions from CLIN 0001 Fixed-Price Work

38. Contract § C.10 required Hamm to: (a) perform PM of heating, air conditioning (AC), hot water heaters, and smoke detectors in each housing unit; (b) perform pre-season PM inspections at each housing unit, scheduled as follows:

<u>Item</u>	<u>Starting Date</u>	<u>Ending Date</u>	<u>Frequency</u>
AC & heat pumps	1 March	31 May	semi-annual
Heating units and heat pumps	1 August	31 October	semi-annual
Smoke detectors	1 August	31 October	annual
Hot water heaters	1 June	31 July	annual

(c) use the “tenant not at home” procedures in § C.7.c.(6) for filter change PM; (d) submit an inspection report to the CO two days after completion of inspection; and (e) replace filters every three months in all housing units, pursuant to the contractor’s annual schedule, updated monthly and submitted with the monthly invoice, except that for designated medical reasons filters were to be replaced every two months (R4, tab 1 at C-47, -48; tab 9 at C-47; tr. 258-59).

39. Bilateral Modification No. P00002 to the contract, executed 30 March 1994, revised, *inter alia*, the HVAC PM and filter replacement quantities as follows:

<u>SLIN</u>	<u>Service</u>	<u>Quantity</u>
0001AZ	HVAC PM by quarters	1,247
0001BA	Filter replacement (Heating)	2,707
0001BB	Filter replacement (A/C)	2,245
0001BC	Filter replacement (Medical)	912

(R4, tab 15 at 1, 4)<sup>3</sup>

40. Navy contract administrator Linda Hazzard’s 7 May 1994 letter to Hamm “adjusted” the four PM SLIN quantities for the base period, stating that the Ben Moreell

housing area was nearly closed, 121 Carper housing units were “hard down,” (unoccupied due to fire, asbestos, or pending demolition, tr. 27, 73), and 32 Torgerson housing units were slated for demolition, resulting in 2,080 housing units (vs. the original 2,538 units):

<u>SLIN</u>	<u>Service</u>	<u>Adjusted Quantity</u>
0001AZ	HVAC PM by quarters	1,040
0001BA	Heating filter replacement	1,960
0001BB	A/C filter replacement	1,960
0001BC	Medical filter replacement	360

Her letter did not modify the price of CLIN 0001 due to such adjustments. (R4, tab 46)

41. Mr. Sims’ 3 October 1994 letter to Hamm requested a unit price cost proposal for reduced requirements for custodial services, grounds maintenance and garbage/refuse disposal, SLINs 0001AZ through 0001BH, 0001BJ, 0001BM, and 0001BN, without identifying their reduced quantities (R4, tab 47).

42. Hamm’s 22 October 1994 letter to Mr. Sims stated that price reductions for fixed-price services at Ben Moreell and Torgerson housing projects were inappropriate because reduction of the fixed price portion of the contract would violate § B.3, Hamm’s proposed price contemplated only minimal work at Ben Moreell housing based on solicitation Amendment No. 12, Hamm had received no notice that Torgerson housing was “off-line,” and it was performing work there (R4, tab 167). Before contract award Hamm was aware that the Carper housing area was slated for later closure (tr. 47).

43. Hamm’s periodic “transmittal sheets” reported HVAC PMs and filter changes to the Navy (R4, tab 151 at 30899-92; tr. 261-62). On a quarterly basis, the Navy counted the number of HVAC PMs and filter changes performed as reported on Hamm’s “transmittal sheets,” from which it derived monthly deductions from Hamm’s CLIN 0001 invoice amounts for work not performed (R4, tab 150 at 20495-96, tab 151; tr. 263-64).

44. On 24 April 1995 Navy inspector Phil Jones wrote to Hamm that since 1 April 1994 the acres to be mowed in the CINCLANT/AFSC housing area, by his calculations, were reduced from the specified 17.94 acres to 6.1 acres, and its edging quantity was reduced from 17,851 to 10,349 linear feet, for which he calculated CLIN 0001 price reductions of \$3,764.286 for mowing and \$1,746.465 for edging (R4, tab 150 at 14386-87).

45. On 11 May 1995 Mr. Jones notified Hamm of deductions for 1 May to 3 June 1995 of \$1,651.368 for general and prestige mowing and \$291.077 for edging at the CINCLANT/AFSC housing area (R4, tab 166).

46. Except for invoices Nos. 26-28, the Navy sent a letter to Hamm with respect to deductions and liquidated damages taken from each prior month's invoice. The Navy cited CLIN 0001 deductions as "Deductions for unsat/ unperformed work" without identifying which work was "unsat," which work was "unperformed," or the date and housing unit for which the deductions were taken, and cited CLIN 0002 deductions without explanation or occasionally: "Deductions for response/quality/procedure" (R4, tab 150 at *e.g.*, 12590, 12718, 18092).

47. The following letters to Hamm were exceptions to the foregoing general pattern, which explained the Navy's CLIN 0001 deductions to some extent. (a) The Navy's 10 March 1995 letter said that after such date the Navy "canceled" heating, hot water and smoke detector PMs not completed by July and October 1994, and requested Hamm to list all such PMs (R4, tab 156 at 1). (b) The Navy's 12 April 1995 letter listed an \$8,997.03 "Grounds Deductions for Ben Morrell" from Hamm's invoice No. 11 for February 1995 (R4, tab 150 at 14214). (c) The Navy's 14 February 1996 letter took a \$130,174.45 deduction from Hamm's invoice No. 21 for December 1995, stating "Due Gov' t for Non-Performed PMs & Filters. '95 Funds" (R4, tab 150 at 17516).

48. The Navy's aggregate deductions and liquidated damages withheld from Hamm's invoices Nos. 1-25 for April 1994 through April 1996, as documented in Rule 4, tab 150, were \$679,271.28, including \$606,815.40 deductions and \$13,805.84 liquidated damages for fixed-price work, and \$18,990.62 deductions and \$39,659.42 liquidated damages for IQ work (R4, tab 140, ex. 36). \$208,732.54 of that \$679,271.28 was for allegedly non-conforming work; the remaining \$470,538.74 Hamm calls "task changes" for deleted or reduced quantities of fixed-price services which the Navy alleged had not been performed, or not performed completely, for housing units that were closed or whose tenants were not at home (R4, tab 140 at 40-41; tr. 72-75, 88-90). That \$470,538.74 is in issue in Hamm's Claim No. 11, ASBCA No. 51837.

49. HVAC PM and filter change quantities specified for the contract, as modified for the base period, first option period, and second option period, were:

<u>Period</u>	<u>0001AZ</u>	<u>0001BA</u>	<u>0001BB</u>	<u>0001BC</u>
Base	1,247	2,707	2,245	912
Option 1	2,493	5,413	4,490	1,824
Option 2	1,870	4,060	3,368	1,368
Totals:	5,610	12,180	10,103	4,104

(R4, tab 15 at 4, tab 20 at 4, tab 43 at 2)

50. "Attachment 2" to respondent's July 2002 post-hearing brief compared the following HVAC PMs and filter changes required by the contract (see preceding finding) and reported by Hamm as performed:

<u>Period</u>	<u>0001AZ</u>	<u>0001BA</u>	<u>0001BB</u>	<u>0001BC</u>
Required	5,610 x 4	12,180	10,103	4,104
Performed	12,428		13,103*	1,342

\* The 13,103 includes 0001BA and 0001BB.

51. On 4 December 2002 the Board denied Hamm's post-hearing "Motion to Strike Evidence," viz., the attachments to respondent's brief which counted the number of HVAC PMs and filter changes Hamm performed, ruling that such information would be considered to the extent it was supported by record evidence. Hamm challenges the accuracy and completeness of respondent's foregoing counts of PMs and filter changes performed, pointing to data not included in respondent's list, arithmetical errors, and 60 entries without page citations to R4, tab 151 (app. reply br. at 5-8).

52. The Board did not review all 4,202 pages of R4, tab 151, to verify the accuracy and completeness of respondent's compilations. Rather, the Board sampled several hundred pages and finds that Attachment 2's quantities were taken from numbers of "work sheets" Hamm recited in its cover letters. Such numbers rarely corresponded to the actual number of housing units Hamm serviced. Furthermore, Hamm submitted several reiterations of its cover letters to the Navy, so the "work sheet" quantities were greatly duplicative. (a) For example, Attachment 2 lists 51 A/C PMs at Willoughby in a cover letter dated 26 June 1996. The eight-page list accompanying that letter states that Hamm serviced 253 units. (R4, tab 151 at 30896-30903). (b) In another example, Attachment 2 lists a total of 378 filter changes at Hewitt Farms for the 2d quarter of 1995, based on the numbers of "work sheets" stated on Hamm's 18 cover letters. Such 18 letters submitted essentially duplicate data; the last two, dated 28 March and 3 April 1995, submitted 10 pages listing 385 filter changes in the second quarter of 1995. We find that the HVAC PMs and filter changes tabulations in respondent's post-hearing brief attachments are not supported by the evidentiary record, and we accord no probative weight to such data.

#### POSITIONS OF THE PARTIES ON ASBCA No. 51837

Hamm argues that the Navy's \$470,538.74 in deductions for fixed-price "task changes" were improper because the Navy was "estopped" from changing the base period amount agreed upon in Modification No. P00002, such work was part of the "guaranteed minimum" fixed-price work, the Navy gave Hamm no prior written notice of such "task change" deductions, the unit costs on which such deductions were computed were not based on costs Hamm actually saved, and the Navy took deductions for partly completed

work as if it were wholly unperformed. Respondent argues that it gave Hamm timely notice and details of its deductions and liquidated damages assessed on account of the closing of the Torgerson and Carper housing areas, and Hamm knew of such closures, and Hamm's claim No. 11 includes the \$1,442.59 in resolved claim No. 9.

#### DECISION ON ASBCA No. 51837

In a contractor's claim for refund of deductions taken under a contract's inspection provisions, the Government has the burden of proof that: (1) it conducted the inspections in accordance with the contract terms, (2) the contractor failed to perform the services called for in the contract or in accordance with the specified acceptable quality level, and (3) the defective performance must be of such a nature that it could not be corrected, or it was not corrected within the time specified for correction. *See Hart's Food Service, Inc., d/b/a Delta Food Service*, ASBCA Nos. 30756, 30757, 89-2 BCA ¶ 21,789 at 109,642-43, and authorities cited therein. In addition, Hamm's contract § E.7 required the Government to "give the Contractor written notice of deficiencies . . . prior to assessing liquidated damages or deducting for nonperformed or unsatisfactory work" (finding 7).

We have found that in all cases the Government gave Hamm notice of deductions and liquidated damages after their assessment, sometimes several days or more than a year after work allegedly was not performed, and in nearly all instances without identifying which work was unperformed or the date and housing unit(s) for which such deductions and liquidated damages were taken (findings 44-47). With respect to the deductions for allegedly unperformed work under SLINs 0001AZ, -BA, -BB, and -BC, we have found that respondent's "Attachment 2" tabulations are not supported by the evidentiary record, and we accorded no probative weight to them (finding 52).

We hold that respondent has not sustained its burden of proving the validity of its deductions and liquidated damages assessed with respect to Hamm's claim No. 11. We sustain the appeal in ASBCA No. 51837. We return the matter to the parties for resolution of quantum.

#### Further Findings on ASBCA No. 51970 Proposal Preparation Costs and Attorneys Fees

53. On 14 April 1998 Hamm submitted to the CO a certified, \$2,055,902.01 request for equitable adjustment (REA) in order to negotiate a "satisfactory resolution" of its 15 remaining claims, which it "consolidated," to avoid piecemeal litigation (R4, tab 140 at 1, 5, 21-47, 51-55, 63, exs. 95, 97; compl. & answer, ¶ 23).

54. On 31 August 1998 Hamm submitted another certification for its April 1998 REA and requested a CO's final decision thereon (R4, tab 141; compl. & answer, ¶ 24).

55. The CO's 29 October 1998 final decision denied Hamm's 31 August 1998 REA (R4, tab 142), which was timely appealed and docketed as ASBCA No. 51970. All Hamm's claims in such REA were settled or are decided in our separate opinion on ASBCA Nos. 51838 and 51864 (see findings 17-19) and hereinabove, except for Hamm's \$127,113.20 "proposal preparation costs" claim.

56. Hamm's \$127,113.20 proposal preparation costs included: (a) \$25,344.28 for the February-April 1998 services of Vandeventer Black LLP, and (b) \$101,768.92 for 2,459.4 hours as of 3 April 1998 of Hamm personnel (E. L. Hamm, Jr., P. L. Brown, S. Drillock, L. L. Balsley, B. J. Boler, and "clerical"), including \$60,851.62 in direct labor, \$33,086.65 in burden/overhead, and \$7,830.65 in G&A expense (R4, tab 140, exs. 93-94). The record includes no evidence that any of the \$60,851.62 direct labor or the \$101,768.92 was excluded from Hamm's overhead.

57. The parties' 26 September 2001 Settlement Agreement provided:

ARTICLE 4. Hamm agrees to abandon, withdraw, dismiss and make no further claim for its attorney fees and interest thereon for the preparation of its [REA], Consolidated REA and filing of its claims.

ARTICLE 5. Hamm agrees to reduce its amount claimed for proposal preparation costs from . . . \$101,758.92 . . . plus interest, to . . . \$75,074.93 . . . plus interest.

(Exhibit A to amended complaint in ASBCA No. 51970)

#### DECISION ON ASBCA No. 51970

Hamm abandoned and withdrew its attorney fee claim (finding 57). In-house costs of claim preparation are unallowable absent proof that such costs were not included in the contractor's overhead rate. *See American Mechanical, Inc.*, ASBCA No. 52033, 03-1 BCA ¶ 32,134 at 158,895 (no evidence that contractor incurred direct costs for claim preparation not otherwise included in its overhead rate). Such proof is absent here (finding 56). We deny Hamm's proposal preparation cost claim.

#### CONCLUSION

We sustain the appeal in ASBCA No. 51837. We deny the appeals in ASBCA Nos. 51085, 51469, 51470, 51471, 51472, and the proposal preparation cost claim in ASBCA No. 51970.

Dated: 1 May 2003

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DAVID W. JAMES, JR.  
Administrative Judge  
Armed Services Board  
of Contract Appeals

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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CARROLL C. DICUS, JR.  
Administrative Judge  
Acting Vice Chairman  
Armed Services Board  
of Contract Appeals

### NOTES

<sup>1</sup> Citations to the “complaint” and “answer” refer to the 20 December 2001 amended complaint and the 11 January 2002 amended answer in ASBCA No. 51970.

<sup>2</sup> Appellant’s assertion of *res judicata* and collateral estoppel based on *E.L. Hamm & Associates, Inc.*, ASBCA No. 48601, 01-1 BCA ¶ 31,260 is misplaced. The language in the opinion relied on by appellant is not the opinion of the majority of the Board panel deciding the appeal. The majority of the panel concurred in result only, essentially for the reason that the language appellant now relies on is *dicta*. We note that the opinion concurring in result only (slip op. p. 19) was inexplicably omitted by CCH when it published the decision.

3

Further revisions to the base period's fixed-price in unilateral Modifications Nos. P00003 and P00004 were held to be invalid on 31 January 2001, in *E. L Hamm & Associates, Inc.*, ASBCA No. 48601, 01-1 BCA ¶ 31,260.

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. 51085, 51469, 51470, 51471, 51472, 51837, and 51970, Appeals of E. L. Hamm & Associates, Inc., rendered in conformance with the Board's Charter.

Dated:

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