ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --	)	
	)	
Robertson & Penn, Inc.	)	
d/b/a Cusseta Laundry, Inc.	)	ASBCA No. 55625
	)	
Under Contract No. DAKF10-02-D-0007	)	

APPEARANCE FOR THE APPELLANT: James F. Nagle, Esq.
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Seattle, WA

APPEARANCES FOR THE GOVERNMENT: COL Anthony M. Helm, JA
Chief Trial Attorney
MAJ ChristinaLynn McCoy, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE DICKINSON
ON THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

Appellant, Robertson & Penn, Inc. ("RPI") was awarded firm fixed-price requirements Contract No. DAKF10-02-D-0007 for the performance of all phases of laundry services for Fort Stewart and Hunter Army Airfield, Georgia. The contract was awarded for a base year and four option years. In March 2005 the 3rd Infantry Division was ordered deployed in support of Operation Iraqi Freedom (OIF). As a result, the laundry workload at Fort Stewart was reduced for the entirety of Option Year 3. RPI filed a claim under the Changes clause seeking an equitable adjustment in the amount of $217,646 for unrealized revenue suffered in Option Year 3 due to alleged negligent government estimates and the government's unilateral act of deployment of troops which reduced the actual contract workload. The claim was denied in its entirety by the contracting officer.

RPI has moved for summary judgment on the two bases of negligent government estimates and the government's unilateral act of deployment of troops which reduced the actual contract workload. The government argues that the government estimates were not negligently prepared and further argues the affirmative defense of the Sovereign Acts Doctrine. Both motions have been fully briefed by the parties.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTIONS

1. On 25 January 2002 the Army issued Solicitation No. DAKF10-02-R-0005 requesting bids for a firm, fixed-price requirements contract for all phases of laundry services for Fort Stewart and Hunter Army Airfield, Georgia (R4, tab 2).

2. On 28 March 2002 the Army awarded Contract No. DAKF10-02-D-0007 to RPI in the amount of $481,367.14 for the base period. The contract was awarded for a base period from 1 April 2002 through 28 February 2003 and four 12-month option years. (R4, tab 1) The contract as awarded included RPI's pricing for the base period as well as pricing for each of the four option years (R4, tab 1 at 2-106). The total duration of the contract, including the exercise of any options under FAR 52.217-9, OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000), could not exceed 60 months. The government also had the ability under FAR 52.217-8, OPTION TO EXTEND SERVICES (NOV 1999), to require continued performance of any of the contracted services at the rates specified in the contract for a period not to exceed 6 months. (R4, tab 1 at 133)

3. The contract contained the following FAR clauses set forth below in pertinent part:

FAR 52.212-4, CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (MAY 2001)

> (c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.
>
> (d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.
>
> ….
>
> (l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work

> hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(R4, tab 1 at 129-130)

FAR 52.216-21, REQUIREMENTS (OCT 1995)

> (a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.
>
> ….
>
> (c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(R4, tab 1 at 132)

4. Both the solicitation and the contract provided the following estimated quantity information to RPI:

WORKLOAD DATA
FORT STEWART and Hunter Army Airfield, GA

The workload stated in the following data is approximate, based on a typical 12 month period, and in no way is to be construed as a guarantee by the government as to the work that shall be processed under this contract. Data shown in the Bid Price Schedule by CLIN number reflects the estimated "normal" annual workload and approximate pieces processed for the past two to three years with a +/-8% variation.

*CLIN 1	Total pieces processed	295,028
*CLIN 2	Total pieces processed	79,409
*CLIN 3	Total pieces processed	79,603
*CLIN 4	Estimated Non Duty Man Hours	60

Total pieces processed for one year is estimated (+/- 8%) to be: 454,100.

*Refer to the Bid Price Schedule for estimated individual items processed.

(R4, tab 1 at TE 2, tab 2 at TE 2.1) It is undisputed that, at the time these estimates were prepared for the 25 January 2002 solicitation (SOF ¶ 1) or prior to the 28 March 2002 award of the contract (SOF ¶ 2), there is no evidence that the government had any knowledge of future deployments in support of OIF.

5. The Performance Work Statement (PWS) of both the solicitation and contract included ¶ 1.8, WORKLOAD, under which was listed ¶ 1.8.1:

> Special Requirements During Normal Hours of Operations: The normal workload for each year will be subject to many variations. The annual training season for the National Guard and Army Reserve (usually from March through September) will provide an increase in organizational work. Additional factors outlined in this PWS may create variations in the annual estimated quantities listed in the Bid Price Schedule. Historically some areas and items have experienced increases of as much as 300% and decreases of up to 100%. Drastic variation in quantity primarily occurs during times of mobilization, deployment or national emergency. Under either circumstance, the Contractor shall, at all times throughout the term of this contract, provide adequately

> trained personnel in sufficient quantity to meet all variations in requirements.

(R4, tab 1 at 112, tab 2 at 43)

6. The President of the United States announced the possibility of a military operation involving Iraq in his State of the Union address on 28 January 2003 (R4, tab 281). Operation Iraqi Freedom (OIF) commenced on 19 March 2003 (R4, tab 282).

7. On 27 January 2005 the Army executed contract Modification No. P00013 which exercised the third option year with a performance period from 1 March 2005 through 28 February 2006 (R4, tab 171).

8. Soldiers from the 3rd Infantry Division (3ID) were deployed from Fort Stewart to Iraq in support of OIF from March 2005 through April 2006 (gov't mot. at 5). "[I]t is undisputed that the Government deployed the Third Infantry Division through an exercise of its sovereign power" (app. mot. at 19; *see also* app. reply at 5).

9. On 15 August 2005 RPI requested the government "consider a re-pricing proposal based on matters influencing contract performance that are beyond the control of the contractor." RPI based its request on what it claimed was "an informational deficiency in the contract solicitation." RPI further stated that the government workload estimate in the solicitation was in error and RPI had relied on that estimate to its detriment. RPI also requested the government's suggestions of ways to cut costs. (R4, tab 199)

10. The parties are in disagreement as to the specific amount of reduction in workload during the third option year. RPI contends the actual workload was 54% less than the government estimates in the contract (app. mot. at 7). The government contends the reduction was less than 11% (app. mot. at 16, n.2). However, for purposes of the motions before us, it is undisputed that there was a reduction of more than 8% (*see* SOF ¶ 4) as a result of the deployment of the 3ID for the entirety of the performance period of the third option year (R4, tab 223; gov't mot. at 5-6; app. mot. at 1, 5-8).

11. On 4 November 2005 the contracting officer responded to RPI's re-pricing request by e-mail:

> After reviewing your request for re-pricing based on matters influencing contract performance that are beyond your control, we have concluded that we cannot legally change the pricing as you have requested. However, we have discussed with you other means that would possibly[ ]alleviate some of the cost being incurred. We can decrease

> the hours of operation at Fort Stewart and Hunter Army Airfield by decreasing the number of days from 5 days to 3 days. By decreaseing [sic] the hours to 3 days a week (MON, WED and FRI), you can still meet the 72 hours turn-around time as specified in the contract. Laundry services will be adjusted back to the current 5 day schedule when the 3rd ID redeploy and or the workload picks up.
>
> If decreasing the hours are acceptable, please respond back to us and the changes will be set forth.

(R4, tab 216)

12. On 14 December 2005 RPI advised the contracting officer by letter that RPI did not believe it had yet received:

> [A]n adequate response to our August 15, 2005 letter.…
>
> Certainly, we do not expect the government to be clairvoyant and for the actuals to precisely match the estimate. Overages or underages of 10 to 15 percent are common and to be expected. Moreover, such overages and underages typically will even out over the life of a contract.
>
> ….
>
> In this case, the estimate is at such a huge variance from the actuals, and for such a sustained and continuous period, that we submit that it could not have been used to prepare with the exercise of due care in looking at all available data. Therefore,…we submit the attached Request for Equitable Adjustment [(REA)] in the amount of $137,545.56 pursuant to the Changes clause of the contract.

(R4, tabs 222, 224-225) The amount requested by RPI covered March through November 2005 (R4, tab 223).

13. By 8 March 2006 RPI had amended the amount requested to $217,646 to cover the entire Option Year 3 performance period from 1 March 2005 through 28 February 2006 (R4, tabs 239, 240).

14. On 29 June 2006 the contracting officer denied RPI's REA based on the contract terms found in FAR 52.216-21, REQUIREMENTS (SOF ¶ 3), and PWS subparagraph 1.8.1 (SOF ¶ 5) (R4, tab 253).

15. RPI submitted a certified claim to the contracting officer on 17 July 2006 in the amount of $217,646 for the period 1 March 2005 through 28 February 2006. The claim sought compensation under the Changes clause on the two bases of negligent government estimates and the government's unilateral act of deployment of troops which reduced the actual contract workload. (R4, tab 257)

16. On 12 October 2006 the contracting officer issued a final decision denying RPI's claim on the basis of contract terms found in FAR 52.216-21, REQUIREMENTS (SOF ¶ 3), and PWS subparagraph 1.8.1 (SOF ¶ 5) (R4, tab 275). On 16 October 2006 RPI had not yet received the contracting officer's final decision and appealed to the Board from a deemed denial.

DECISION

We evaluate the parties' cross-motions for summary judgment under the well-settled standard that:

> Summary judgment is properly granted only where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law…. The moving party bears the burden of establishing the absence of any genuine issue of material fact and all significant doubt over factual issues must be resolved in favor of the party opposing summary judgment.

Mingus Consructors, Inc. v. United States, 812 F.2d 1387, 1390 (Fed. Cir. 1987). The parties are in agreement that there are no genuine issues of material fact for trial (app. reply at 1; gov't mot. at 1). Their differences are confined to the law and its application to the facts of this appeal.

RPI presents in its motion for summary judgment the same two arguments presented in its certified claim but in the alternative: (1) negligent government workload estimates; and, (2) the deliberate government act of troop deployment unilaterally altered the contract by reducing actual workloads.

The government affirmatively argues: (1) the government estimates were not negligent as a matter of law; and, (2) the Sovereign Acts Doctrine precludes the remedy sought by RPI as a result of troop deployment. We interpret the government's opposition and motion to be a cross-motion for summary judgment as to both of RPI's arguments.

Negligently Prepared Government Estimates

RPI argues that it is entitled to summary judgment because the government estimates were negligently prepared:

> In this case, the Army took no account of certain critical developments before unilaterally exercising the modification for option year 3, and the non-updated data harmed [RPI]. Specifically, the Government's estimated quantities for option year 3 failed to account for no less than two significant and separate pieces of information that were both highly relevant and available and, as a result, actual quantities fell far short of estimated quantities over the course of that option year, by approximately 54%. First, the estimated quantities set forth in the modification under which option year 3 was exercised indicate that the Government merely adopted the same estimated quantities that were developed in connection with the award of the base contract at least three years prior to the execution of the option year 3 modification. The Government thus failed to take into account the recent information relating to the Government's actual demand for laundry services during the three years prior to the exercise of option year 3, which not only would have been relevant but, perhaps, one of, if not, the most, reliable sources of data for estimating actual demand for each successive option year.

(App. mot. at 11-12)

When using a requirements-type contract, the government is required to order its requirements from the contractor but is under no obligation to actually have requirements as long as the absence of requirements is in good faith. *American Marine Decking Services, Inc*., ASBCA Nos. 44440 *et al*., 97-1 BCA ¶ 28,821. An important feature of requirements contracts is a government estimate of the anticipated requirements. This estimate, however, "is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal." FAR 16.503(a)(1).

It is well-established, as argued by RPI, that the government is required to exercise reasonable care in the preparation of its workload estimates. *Womack v. United States*, 389 F.2d 793, 801 (Ct. Cl. 1968). Thus:

> The controlling regulation explicitly states that "[t]he contracting officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available." 48 C.F.R. Sec. 16.503(a)(1) (1991).…The government used information that was reasonably available; it need not search for or create additional information. See Womack, 389 F.2d at 801; accord Chemical Technology, Inc. v. United States, 645 F.2d 934, 946, 227 Ct.Cl. 120 (1981).
>
> The government may go beyond the requirements of the regulations, of course. And it might be well advised to do so if it wants to secure the best prices and avoid contractors raising their bids to cover the uncertainties. But we are in no position to impose such a requirement either in this case or as a general proposition in the face of the regulations promulgated by competent authority. The regulations explicitly say that estimates may be based on the most current information about previous requirements available; Medart knew this, as well as who bore the risks of variances of quantity. It should have factored the risks into its bid, see Shader, 276 F.2d at 7, just as the regulation was factored into the contract.

Medart, Inc. v. Austin, 967 F.2d 579, 582 (Fed.Cir. 1992).

On the record before us it is undisputed that the government based its workload estimates, prepared prior to solicitation and contract award, on two to three years of laundry contract performance immediately preceding the instant contract (SOF ¶ 4). In *Fa. Kammerdiener GmbH & Co., KG*, ASBCA No. 45248, 94-3 BCA ¶ 27,197, the government had new information affecting its estimates after the solicitation but before contract award and the contractor was granted an equitable adjustment to the contract due to the failure of the government to update the estimates prior to award. RPI has offered no evidence that the government in this case had any information pertinent to the workload estimates prior to the solicitation or contract award that it failed to take into consideration (SOF ¶ 4). In *Solano Aircraft Service, Inc.*, ASBCA Nos. 20677, 20941, 77-2 BCA ¶ 12,584 at 60,985-86, a case very similar to the one before us, the government was held not liable where operational requirements due to "a sharply-increased need for airlift capability for military operations in Israel, South Vietnam and Cambodia…were not known, nor could be known, when the estimates of the services required were being made." Likewise, in the case before us, the announcement of the potential for deployment to Iraq and the beginning of OIF occurred at least one year after the preparation of the estimates in the solicitation and contract (SOF ¶¶ 1, 2, 6).

In this case, RPI does not argue that the government estimates in the solicitation and contract were negligently prepared prior to contract award. Rather, RPI argues that the government estimates for the third option year were negligently prepared because the government did not update the estimates in the contract for each successive year. (App. mot. at 11-12). This argument ignores the fact that the government estimates and RPI's bid pricing for the third option year were both incorporated into the contract at the time of award on 28 March 2002 (SOF ¶ 2). The purpose of options is to protect the government from future uncertainties by obtaining firm commitments from contractors as to pricing and other option terms at the time of contract award. *Rumsfeld v. Applied Companies, Inc.*, 325 F.3d 1328, 1334 (Fed. Cir. 2003). RPI argues that the government had an obligation to update the estimates in the contract prior to exercise of Option Year 3 (app. mot. at 11-12). The cases cited by RPI all deal with the government's obligation to consider reasonably current actual workloads in preparing the government estimated workload at the time the estimates are prepared prior to contract award. They do not deal with the situation we have here, which is the exercise of an option on the basis of estimates and contract prices agreed to at least three years earlier at the time of contract award. RPI's argument ignores FAR 17.207(f)(2) which obligates the government to exercise options in strict conformity with the terms of the contract as awarded including price.

On the basis of the foregoing, we deny RPI's motion for summary judgment on the basis of negligently prepared estimates for two reasons: (1) there is no evidence the government had information or knowledge of a deployment to Iraq at the time the estimates were prepared; and, (2) because the government had no obligation to update estimates prior to the exercise of options. We agree with the government that on the undisputed facts before us, the government estimates were not negligently prepared and we grant summary judgment to the government as to this issue.

Deliberate Government Act Unilaterally Altered the Contract

RPI's second argument was made in the alternative in its motion for summary judgment.

> Assuming, *arguendo*, that the Army's estimates for the option year did not have to be updated, the Army's unilateral decision to deploy the troops is a Government act deleting portions of the contract workload. Whether viewed as a deductive change order or a partial termination for convenience, such an act entitles the contractor to an equitable adjustment.

(App. mot. at 13) We note at the outset that the termination for convenience clause for commercial items in this contract (SOF ¶ 3) provides no remedy for an equitable

adjustment due to reduced workloads or lost revenue so it cannot provide a basis for the relief RPI seeks. *See, e.g., In re Individual Development Associates, Inc.*, ASBCA No. 53910, 04-2 BCA ¶ 32,740, *aff'd on recon.*, 05-2 BCA ¶ 32,985. We will therefore limit our discussion to RPI's argument for relief on the basis of a deductive change under the Changes clause.[1]

It is undisputed that in Option Year 3 the deployment of the 3ID resulted in a reduced actual laundry workload under the contract (SOF ¶ 10). RPI argues that the Army's decision to deploy troops "is a Government act deleting portions of the contract workload" and that "such an act entitles the contractor to an equitable adjustment" under the Changes clause (app. mot. at 13). This is so, RPI argues, even though the deployment of the troops was a sovereign act (app. mot. at 19; SOF ¶ 8). The government argues that it is entitled to summary judgment in its favor on this issue because the Sovereign Acts Doctrine forbids the relief sought by RPI.

The Sovereign Acts Doctrine has a long history in which it has been held:

> The two characters which the government possesses as a contractor and as a sovereign cannot be thus fused; nor can the United States while sued in the one character be made liable in damages for their acts done in the other. Whatever acts the government may do, be they legislative or executive, so long as they be public and general, cannot be deemed specially to alter, modify, obstruct or violate the particular contracts into which it enters with private persons.…the United States as a contractor cannot be held liable directly or indirectly for the public acts of the United States as a sovereign.

Jones v. United States, 1 Ct. Cl. 383, 384-85 (1865). In the appeal before us, RPI seeks judgment in its favor specifically to have the government as a contracting party held accountable under the Changes clause for the effects upon the laundry workload of the sovereign act of ordering the deployment of troops to Iraq (R4, tab 257; app. mot. at 1). It is well-established that "the Changes clause does not cover sovereign acts." *Pacific Architects and Engineers, Inc.*, ASBCA No. 21168, 79-2 BCA ¶ 14,019, *aff'd*, 230 Ct.

[1] In its Reply to Government's Opposition and Opposition to the Government's Motion for Summary Judgment, RPI states that it "does not rely on the changes clause in support of its motion" (app. reply at 8, n.1). However, in its various REAs (SOF ¶¶ 12, 13) and its certified claim to the contracting officer (SOF ¶ 15), RPI specifically stated it sought relief under the Changes clause. RPI's alternative theory of deductive change necessarily arises under the Changes clause.

Cl. 1024 (1982); *Conner Bros. Construction Co.*, ASBCA No. 54109, 07-2 BCA ¶ 33,703 at 166,880, *appeal docketed*, No. 08-1188 (Fed. Cir. Feb. 6, 2008).

It is undisputed that in March 2005 3ID troops were ordered deployed from Fort Stewart as a sovereign act of the United States government (SOF ¶ 8). It is also undisputed that, as a result of the deployment of the 3ID, the laundry workload experienced by RPI under the contract at Fort Stewart was reduced (SOF ¶ 10). Under the Sovereign Acts Doctrine, there is no remedy for RPI unless the contract specifically provides one:

> [The government] cannot enter into a binding agreement that it will not exercise a sovereign power, but it can say, if it does, it will pay you the amount by which your costs are increased thereby. *United States v. Bostwick*, 94 U.S. 53, 69, *Sunswick Corp. v. United States*, 109 C. Cls. 772, *certiorari denied*.

Gerhardt F. Meyne Co. v. United States, 110 Ct. Cl. 527, 550 (1948). "'[A]n express contractual commitment to assume responsibility for sovereign acts is required' to bind the government." *Connor Bros.*, *supra*, 07-2 BCA at 166,880.

PWS ¶ 1.8.1 put all potential bidders, including RPI, on notice of the possibility of "drastic variation in quantity" due to circumstances such as mobilization, deployment or national emergency and neither that paragraph nor any other in the contract makes any reference to a right to compensation or other remedy as a result of such an occurrence (SOF ¶ 5). RPI argues that the inclusion of PWS ¶ 1.8.1 cannot preclude compensation because it does not expressly "'advise[] the contractor that it is *not* entitled to an appropriate adjustment if there is a 'drastic variation in quantity'" (app. reply at 6) (emphasis added). We are unpersuaded. As was the case in *Orlando Helicopter Airways, Inc. v. Widnall*, 51 F.3d 258 (Fed. Cir. 1995), in the absence of a specific contract provision expressly giving the contractor a right to a price increase under a firm fixed-price contract, there is no remedy for the impact suffered as a result of a sovereign act. *See also Pacific Architects & Engineers, Inc.*, ASBCA No. 21168, 79-2 BCA ¶ 14,019, *aff'd*, 230 Ct. Cl. 1024 (1982).

RPI makes the further argument that, even if there is no express language in the contract promising compensation for a sovereign act, the intention of the government to compensate RPI can be implied from other contract terms (app. mot. at 18; app. reply at 7):

> RPI contends that the Government can enter into a promise with a contractor such that, if a contractor is induced to rely upon a Government estimate in developing its bid price and that estimate proves to be inaccurate, then the contractor shall

> be entitled to a contract adjustment – *even if the inaccuracy arises from the Government's decision to exercise its sovereign power*. Thus, the key question before the Board, which is appropriate for disposal on summary judgment, is whether the Board considers the *estimate* prepared by the Government for the third option year to constitute such a *promise*.

(App. reply at 2) (emphasis added)

> The contract between the Army and RPI included an express estimate for the third option year.… Furthermore, the reasonable implication underlying that estimate was that RPI could rely on it to be accurate or, if not accurate, be compensated accordingly, *including in the event of a sovereign act*.

(App. reply at 7-8) (emphasis added) Even though implied government obligations in public contracts are disfavored, *United States v. Winstar Corp.*, 518 U.S. 839, 874 (1996) (plurality opinion), RPI's argument is correct that, under certain circumstances, a government promise to compensate a contractor for damages resulting from a sovereign act can be implied from other contract terms. *Old Dominion Security*, ASBCA No. 40062, 91-3 BCA ¶ 24,173 at 120,918-19. That argument does not help RPI here, however, because the implied "promise" alleged by RPI, the contractual workload estimates (app. mot. at 18-19; app. reply at 5-7), on their face were historically based upon and applied to "normal" non-deployment periods (SOF ¶ 4) and not to times of deployment (SOF ¶ 5). RPI's argument that the workload estimates applied to times of deployment would require us to ignore ¶ 1.8.1 which expressly put RPI on notice that "mobilization, deployment or national emergency" were possible as were "drastic variation[s] in quantity" as a result (SOF ¶ 5). The contract must be read as a whole, giving effect to all its terms. *Julius Goldman's Egg City v. United States*, 697 F.2d 1051 (Fed. Cir. 1983). The ¶ 1.8.1 disclosure of the potential for "drastic variation in quantity" in times of "mobilization, deployment or national emergency" is the only mention we can find in the contract which is applicable to the sovereign act of deployment. Further, ¶ 1.8.1 did not promise expressly or impliedly that the government would compensate RPI for damages incurred as a result of "mobilization, deployment or national emergency." (SOF ¶ 5)

"It has long been held…that the United States when sued as a contractor cannot be held liable for an obstruction to the performance of the particular contract resulting from its public and general acts as sovereign." *Horowitz v. United States*, 267 U.S. 458, 461 (1925). RPI's deductive change argument impermissibly attempts to use the estimates made by the government in its contracting capacity (SOF ¶ 4) to apply to the

occurrence of the sovereign act of troop deployment (SOF ¶¶ 6, 8). Further, RPI's argument that a deductive change occurred seeks a remedy inherently arising from the contracting capacity of the government without any citation to any term of the contract that would justify such a remedy for a sovereign act. The government as a contracting party did not make a deductive change order. In fact, there was no action by the government in its contracting capacity at all. No terms of the contract were changed. The reduction in the government's laundry requirements complained of were the result of sovereign acts, not contracting actions (SOF ¶¶ 6, 8). That occurrence does not justify nor require the remedies argued by RPI.

On the basis of the undisputed facts before us, we deny RPI's motion for summary judgment on this issue. We find the government entitled to judgment in its favor as a matter of law under the Sovereign Acts Doctrine.

CONCLUSION

RPI's motion for summary judgment is denied in its entirety. The government's motion for summary judgment is granted in its entirety. The appeal is denied.

Dated: 3 September 2008

DIANA S. DICKINSON
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)
I concur

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

I concur

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. 55625, Appeal of Robertson & Penn, Inc. d/b/a Cusseta Laundry, Inc., rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals