ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --	)	
	)	
Osborne Construction Company	)	ASBCA No. 55030
	)	
Under Contract No. DACA85-01-C-0026	)	

APPEARANCE FOR THE APPELLANT: Hal J. Perloff, Esq.
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APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.
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OPINION BY ADMINISTRATIVE JUDGE PAGE
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This appeal arises under Contract No. DACA85-01-C-0026 between the United States Army Corps of Engineers (Corps or government) and Osborne Construction Company (Osborne or contractor). The contract called for the replacement of military family housing units at two subdivisions located at Ft. Wainwright, AK and generally required the contractor to demolish 12 existing units at the two subdivisions and design and construct 66 new units at one of the subdivisions. This appeal arose after the government unilaterally deleted demolition at the subdivision which was not slated for new housing, and the parties could not agree on the amount of the credit to be afforded as a result of the changed work. The parties filed cross-motions for summary judgment; we deny the motions.

STATEMENT OF FACTS
FOR PURPOSES OF THE MOTIONS

In June 2001, the government issued a request for proposals (RFP) for the replacement of family housing at Fort Wainwright, Alaska. The work was to be performed at existing housing areas known as Southern Cross and North Town. The RFP stated that there would be a two-step design-build acquisition process, and that no more than three offerors would be selected for step two. (R4, tab 14)

The original RFP described the work in eleven separate Contract Line Item Numbers (CLINs or Items) (R4, tab 32). As amended by RFP Amendment No. R0003 dated 13 August 2001, the RFP contained fifteen CLINs, of which eight were base items (CLINs 0001-0008) and seven were optional items (CLINs 0009-0015). Relevant here are base items CLIN 0005, demolition of family housing in the Southern Cross area; CLIN 0006, the capping of utilities in and restoration of the Southern Cross site; CLIN 0007, demolition of existing housing in the North Town area; and CLIN 0008, the capping of utilities in and restoration of the North Town site. The RFP called for these CLINs to be bid in an estimated quantity of one each as "Lump Sum" items. CLINs 0001-0004 required design of 66 units for the two sites, and construction of those units at the North Town site. (R4, tab 14)

The statement of work (SOW) described the project as "a whole neighborhood revitalization," consisting of the design and construction of replacement family housing and "associated housing demolition" at Ft. Wainwright. It advised that the facility was "phasing out aging housing units constructed in the 1940s," and that the work included the decommissioning and demolition of "twelve 8-plex housing structures (96 units)." (R4, tab 30 at 314, § 01010, ¶1.1(a)) This work was further described in ¶ 1.1(b)(1) entitled "Demolition of 12 housing structures," which provides that the "buildings to be demolished are located in two subdivisions: North Town in North Post and Southern Cross in South Post" (*id.*). Detailed design criteria for project demolition combined North Town and Southern Cross work, and the specification refers to a single "Contractor." (*Id*. at 319-22, ¶¶ 2.1.4-5) The contractor was required to sequence work to accomplish demolition at Southern Cross in Spring 2002, but allowed for demolition "of buildings in the North Town neighborhood" to be determined by the contractor's schedule (*id.* at 323, ¶¶ 2.1.7(a)-(b)).

The RFP at section 00100, "PROPOSAL SUBMISSION REQUIREMENTS," called for a two-step design-build approach that required prospective contractors to provide only volumes one (qualifications and understanding of performance requirements) and two (pro forma requirements) in the first round of competition. Only proposers selected by the government from these entries would be allowed to progress to the second step of competition, and permitted to submit three additional proposal volumes presenting a technical solution, manufacturers' catalog data, and price information. (R4, tab 32 at 16-22)

Following the Proposal Submission Requirements in the RFP was section 00120 entitled "EVALUATION FACTORS FOR AWARD." Among other things it provided at paragraph 1, "Initial Proposal Compliance" that "The Government will award a firm fixed price contract to the Offeror of the proposal that represents the best overall value to the Government." (R4, tab 32 at 23) The RFP directed prospective contractors in the proposed schedule that failure to submit an offer "on all items...will result in an

incomplete offer and the proposal will be rejected. Lump sum must be shown for each item within the schedule." The RFP also stated that the government would "evaluate offers for price purposes by adding the total price of all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s)." (*Id.* at 11)

Prospective contractors were advised by FAR 52.215-1, INSTRUCTIONS TO OFFERORS – COMPETITIVE ACQUISITION (MAY 2001) of the government's right to award a contract for less than the full complement of work described by the RFP. It provided in relevant part:

> (c) Submission, modification, revision, and withdrawal of proposals….
>
> (2) The first page of the proposal must show—
>
> ….
>
> (iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;
>
> ….
>
> (f) Contract award….
>
> ….
>
> (5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.
>
> (6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(R4, tab 21 at 286-88)

On 20 July 2001, the government issued RFP Amendment No. R0002, which extended the proposal due date to 31 August 2001, and changed the government's procurement strategy from a two-step design-build acquisition strategy to a one-step RFP. Prospective contractors were advised that the "rewrite to the solicitation regarding this change is presently being completed." (R4, tab 32 at 847-49)

RFP Amendment No. R0004, dated 22 August 2001, provided guidance to prospective contractors for changing to the one-step procurement that was established by RFP Amendment R0002 (R4, tab 32 at 1061-137). By this amendment, RFP Section 00100 PROPOSAL SUBMISSION REQUIREMENTS gave revised directions for the manner in which prospective contractors should furnish proposals (*id*. at 1094). The content of these volumes did not differ from that set forth in the two-step process; rather, interested contractors were directed to provide all of the required information in a single submission. The amendment did not change the statement in section 00120, EVALUATION FACTORS FOR AWARD providing for the intended award of "a firm fixed price contract." (*Compare id.* at 1120 and 1132) Other than this procedural instruction, neither Amendment No. R0002 nor No. R0004 advised prospective contractors of any substantive differences between a two-step design-build procurement and a single step procedure.

The parties' submissions provide no information beyond the text of those amendments changing the procurement strategy from a two-step design-build procurement to a single step. The Board is uninformed regarding the government's basis for doing so, and any relevant documentation of its adherence to statutory and regulatory provisions controlling the acquisition of design and construction services. Although a list of "PROPOSED QUESTIONS AND ANSWERS" is included with Amendment No. R0004, there is no mention of the change in the procurement process. (R4, tab 32 at 1063-67) The record does not disclose whether there were any discussions or an exchange of correspondence between the parties regarding the implications of the government's revised acquisition process, in particular as it relates to whether a single contract was to be awarded.

Osborne submitted its initial proposal on 31 August 2001. In its cover letter, appellant stated as required by FAR 52.215-1 that it agreed "to furnish any or all items upon which prices are offered at the price set opposite each item." (R4, tab 18) Following further discussions between the parties, Osborne submitted a final proposal on 21 September 2001 in the total amount of $22,603,450 that included separate amounts for each of the 15 CLINs. The amount for demolition work at Southern Cross stated in CLIN 0005 was $425,000 (military housing), and the offer on CLIN 0006 (site work) was $55,000. For demolition at North Town, Osborne included a total of $810,000, comprised of $700,000 (CLIN 0007, military housing) and $110,000 (CLIN 0008, site work). (R4, tab 15 at 194-95, 198-200)

Thomas S. Vasilatos was Osborne's Vice President for special projects at the relevant times. In a declaration dated 28 August 2007, Mr. Vasilatos stated that he was responsible for Osborne's response to the RFP, and involved with contract negotiations and subsequent performance. Mr. Vasilatos described Osborne's bid preparation process, and stated that appellant relied in part upon subcontractor quotations for some of the work to be done under the contract. He said that subcontractor quotations received by appellant for demolition work in the Southern Cross and North Town sites set forth in CLINs 0005 through 0008 were in lump sum amounts and did not give a separate price for work to be done only at Southern Cross. Mr. Vasilatos stated that, in completing the Proposal Schedule, appellant "arbitrarily apportioned" costs among the four CLINs providing for demolition-related work. (App. mot., ex. A, ¶¶ 2-4, 9-11)

The government accepted Osborne's proposal dated 31 August 2001 as amended. According to the Standard Form 1442, Solicitation, Offer, and Award (Construction, Alterations or Repair), the contractor's "offer date" was 31 August 2001 (¶ 20c). The contract was signed by Daniel C. Jacobson, Executive Vice President for Osborne (¶ 30a). Contract No. DACA85-01-C-0026 was awarded to appellant on 28 September 2001. (R4, tabs 14, 15)

Contract clause DFARS 252.236-7008, CONTRACT PRICES – BIDDING SCHEDULES (DEC 1991) provided:

> (a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for –
>
> (1) Furnishing all plant, labor, equipment, appliances, and materials; and
>
> (2) Performing all operations required to complete the work in conformity with the drawings and specifications.
>
> (b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

(R4, tab 28)

Contract § 01271, "MEASUREMENT, PAYMENT, AND CONTRACT COST BREAKDOWN," provides for the manner in which payment is to be made for various

items. Paragraph 1.1.1, "Lump Sum," applies to CLINs 0005-0008, and states that "Each lump sum item will be measured for payment as a complete item." Paragraph 1.2, "PAYMENT," provided:

> Payment will be made at the contract unit price. The price for each item shall constitute full compensation for furnishing all labor, equipment, and materials, and performing all operations necessary to construct and complete the work in accordance with the specifications and drawings. Payment shall be considered as full compensation, notwithstanding that minor features of the work to complete the item may not be mentioned. Work paid for under one item will not be paid for under any other item.

(R4, tab 31 at 326)

The contract included FAR 52.243-4, CHANGES (AUG 1987), which states the following, in part:

> (a) The Contracting Officer may, at any time,...make changes in the work within the general scope of the contract….
>
> ….
>
> (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing….

(R4, tab 25) It also included DFARS 252.236-7000, MODIFICATION PROPOSALS – PRICE BREAKDOWN (DEC 1991) (R4, tab 27).

Appellant received the notice to proceed and began work in October 2001 (compl. and answer ¶ 16).

By letter dated 7 June 2002, the government advised appellant that it was considering CLINs 0005 and 0006 (Southern Cross) for deletion under the Changes clause. Osborne was directed to suspend work relating to those items. (R4, tab 12) On 18 June 2002, the government issued Modification No. P00005, which deleted CLINs 0005 and 0006 pursuant to the Changes clause. In what was described as the first of a

two-part modification, the contract price was decreased by a total of $240,000. Osborne was directed to submit a proposal, in accordance with DFARS 252.236-7000 to permit an analysis of costs associated with all work affected by the modification. (R4, tab 11)

Osborne assigned Michael D. Ritchie as project manager in July 2002. In a declaration, Mr. Ritchie states that he learned that, in the Spring of 2002, the government had spoken to Mr. Ritchie's predecessor, Mr. Wilson, and asked what kind of credit the government would receive for deletion of the Southern Cross demolition work. Mr. Ritchie understood, from his conversations with Osborne and government employees, that Mr. Wilson allegedly said that the government would get most of CLINs 0005 and 0006 (totaling $480,000) back. When he replaced Mr. Wilson, Mr. Ritchie informed the government that the credit for deletion of CLINs 0005 and 0006 would be substantially less than that amount. (App. mot., ex. C, ¶¶ 2, 6)

Mr. Ritchie says that Osborne and/or its subcontractors performed some work on CLINs 0005 and 0006 before these items were deleted. They had disconnected electrical and mechanical service and some cabinetry had been removed from the housing units. He also says the work that was deleted was related to work that was within the scope of the contract; for example, Mr. Ritchie states that Osborne and its site work contractor "intended to use excess materials generated from grading at the North Town area to fill the demolished foundations at the Southern Cross area" rather than disposing of it. (App. mot., ex. C, ¶¶ 7, 8)

On 5 November 2002, the government received appellant's "detailed cost proposal" covering the work deleted by Modification No. P00005 (R4, tab 10). Osborne sought a total decrease of $198,981 which, in large part, consisted of the cost of asbestos abatement, demolition, and site work that was to be done by three subcontractors (*id.* at 166). Appellant submitted a revised cost proposal on 7 February 2003, in the higher amount of $226,487 (R4, tab 9).

On 17 June 2003, the contracting officer wrote Osborne, taking issue with the proposed credit by the contractor for the deleted CLINs. The contracting officer stated that the items listed in the bidding schedule were severable, and premised the view that the work was independent upon three statements in the RFP and contract. The contracting officer noted *inter alia* that under FAR 52.215-1(f)(6), the government reserved the right to make multiple awards if it determined it was in the government's best interest to do so. (R4, tab 8)

Osborne disagreed with the contracting officer's position, and continued to press its position regarding an appropriate price for the deleted work. The contractor's letter of 2 July 2003 contended that the provisions relied upon by the government were not applicable to pricing work deleted after award, relied upon the contract's Changes (FAR

52.243-4) and Termination for Convenience of the Government (FAR 52.249-2) clauses, and argued these entitled Osborne to an "equitable adjustment" for the postaward deletion of work. (R4, tab 7)

Following further correspondence and discussions between the parties, Osborne submitted a certified claim dated 21 January 2005 to the contracting officer in the amount of $253,513 (R4, tab 3). Appellant asserted that an equitable adjustment in that amount was necessary to provide "a total credit of $226,487 to the government which will require Modification P00005, Part 1 to be reduced from -$240,000 to -$226,487" (*id*. at 34).

By final decision dated 11 March 2005, the contracting officer denied Osborne's claim (R4, tab 1). She reiterated that the RFP alerted prospective contractors of the possibility of multiple awards or awards of less than the quantity required to be offered, and that the "lump sum line items prices [for CLINs 0005 and 0006] should have constituted full compensation for all costs associated with completing the work." The contracting officer reasoned that work under these CLINs should not be adjusted after award, but deleted at the contract price of $480,000 for those Items. (*Id.* at 6)

Osborne filed a timely appeal of the contracting officer's decision. Appellant has moved for summary judgment. The government opposes appellant's motion, and has filed a cross-motion for summary judgment.

DECISION

1. *Summary Judgment*

We follow the well-established guidelines for summary judgment, which is an efficient procedure for resolving suits where there are no genuine issues of material fact and the movant is entitled to favorable judgment as a matter of law. *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1562-63 (Fed. Cir. 1987); *Voices R Us, Inc.*, ASBCA No. 51565, 99-1 BCA ¶ 30,213 at 149,478; FED. R. CIV. P. 56. A movant for successful summary judgment must show, based solely upon the record now before us and without benefit of a hearing that there is sufficient and uncontroverted evidence to meet its evidentiary obligation as defined by law and precedent. Substantive law dictates the parties' relative burdens, and defines those "material" facts that may affect the outcome of a particular cause of action. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986); *see also Schnider's of OKC*, ASBCA No. 54327, 04-2 BCA ¶ 32,776 at 162,074.

While both the government and Osborne assert there are no genuine issues of material fact regarding their respective legal positions and agree upon the relative burdens of proof, they interpret contract provisions differently and place different

emphasis upon the motivation behind their actions. Merely because a party has moved for summary judgment and avers there are no genuine issues of fact precluding its recovery does not mean that it "concede[s] that no issues remain in the event his adversary's theory is adopted." *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1391 (Fed. Cir. 1987) (*quoting Nafco Oil & Gas, Inc. v. Appleman*, 389 F.2d 323, 324-25 (10th Cir. 1967)). Each cross-motion is evaluated separately on its merits, and all reasonable inferences are drawn in favor of the defending party; the Board is not bound to "grant judgment as a matter of law for one side or the other." *Mingus Constructors, Inc.*, 812 F.2d at 1391. Although we determine whether disputed facts are present, the Board will not at this juncture serve as arbiters to resolve controversies nor weigh evidence or make determinations of credibility, *Anderson v. Liberty Lobby*, 477 U.S. at 248.

2. *The Parties' Positions*

The parties' dispute is the appropriate credit due the government in this fixed-price construction contract following the post-award deletion of demolition work at the Southern Cross site. The parties filed cross-motions for summary judgment in which each asserts there are no genuine issues of material fact, agrees that the government is entitled to a credit for the omitted demolition, concurs that the contract's Changes clause applies, and contends that it alone is entitled to a favorable result. (Gov't mot. at 2; app. mot. at 1-2) The difference between the parties' positions is the method of pricing and amount advocated by each for the eliminated work. Osborne seeks a total deletion of $226,487 (R4, tab 3 at 34) through application of the "would have cost rule," under which an appropriate equitable adjustment occasioned by the deletion of work is "the difference between the reasonable cost of performing without the change or deletion and the reasonable cost of performing with the change or deletion." *Precision Dynamics, Inc.*, ASBCA No. 50519, 05-2 BCA ¶ 33,071 at 163,926, *citing, e.g., Celesco Industries, Inc.*, ASBCA No. 22251, 79-1 BCA ¶ 13,604 at 66,683; *accord Sauer, Inc. v. Danzig*, 224 F.3d 1340, 1348 (Fed. Cir. 2000). Conversely, the government argues that this change qualifies as an exception to the general rule because the demolition work is a severable item. The government alleges that the deductive change should be $480,000, the total amount stated in Osborne's bid for CLINs 0005-0006 as its price for demolition work at the Southern Cross site (gov't mot. at 4, 7-8). The government's argument turns in large part, although not exclusively, upon its contention that including the FAR 52.215-1 clause in the contract placed Osborne on notice that the work was severable. It is uncontroverted that Osborne entered into a contract containing FAR 52.215-1; the parties sharply disagree what that agreement portends.

3. *Burden of Proof*

In a dispute over a deductive change, the government bears the "burden of proving how much of a downward equitable adjustment in price" should be instituted for the deleted work, *Nager Electric Co. v. United States*, 442 F.2d 936, 946 (Ct. Cl. 1971). Typically, the price of a deductive contract change is based solely upon the costs "the contractor would have incurred had the work not been reduced or deleted." *Olympiareinigung, GmbH*, ASBCA No. 53643, 04-1 BCA ¶ 32,458 at 160,563, *citing Celesco Industries, Inc.*, ASBCA No. 22251, 79-1 BCA ¶ 13,604 at 66,683, thus generally making the amount allocated by a contractor's bid for that work irrelevant to the calculation. *Olympiareinigung* at 160,563. For the government to obtain the "favorable judgment" of pricing the change using the larger credit of Osborne's proposed price for the Southern Cross demolition, it must substantiate that the work was from the outset a "severable" task. If the government cannot do so and Osborne can show there is no need for trial, then appellant's position will be sustained and the deductive change will be calculated according to the savings realized by the contractor by not having to perform that work. *See CTA*, ASBCA No. 47062, 00-2 BCA ¶ 30,947 at 152,762. Where the solicitation contemplates award of a single contract, that countenances against a determination of severability. *See Griffin Services, Inc. v. General Services Administration*, GSBCA No. 10841, 92-2 BCA ¶ 24,945 at 124,333 (government reliance on line item price unreasonable where contract award was based on aggregated items).

4. *Evidentiary Analysis*

Proof of the parties' intentionality is relevant to our deciding how the deductive change should be priced. *CTA*, 00-2 BCA ¶ 30,947 at 152,763, and it is evidence thereof that is wanting. The Board raised *sua sponte* its concern that the Rule 4 file as furnished by the parties was incomplete and that there appeared to be errors and inconsistencies in the contract documents provided. *See* Board's Orders dated 9, 12 and 30 December 2008 and 7 January 2009 and the parties' responses of 9, 14 and 23 December 2008, and 2, 6, 8 and 9 January 2009. Among other things, documents in the initial Rule 4 file, which contained only excerpts from the contract and RFP, left unclear whether the procurement had been conducted using a two-step process pursuant to FAR 36.3 TWO-PHASE DESIGN-BUILD SELECTION PROCEDURES or some other acquisition strategy.

As augmented, the record makes clear that the procurement was changed from a two-step acquisition to a one-step acquisition. The record is bereft, however, of the parties' respective understandings regarding the implications (if any) of this changed procurement approach, which may reach well beyond a simple change in the manner the contractor submitted its proposal. We are unsure what discussions, if any, took place regarding the requirement of FAR 36.303 which states that, at the end of the two-step process, "One contract will be awarded using competitive negotiation," or FAR 36.101,

which provides that "[w]hen a requirement in this part is inconsistent with a requirement in another part of this regulation, this Part 36 shall take precedence if the acquisition of construction or architect-engineer services is involved." The parties do not advise whether they considered that the limitation of a single contract award might be inconsistent with FAR 52.215-1. While the change to a one-step acquisition may have taken the procurement out of FAR 36.3, the parties do not address the amended RFP's continuing reference in Section 00120 to the government's "award of a firm fixed price contract to the Offeror of the proposal that represents the best overall value to the Government." (R4, tab 32 at 1306)

5. *Distinction Between Summary Judgment and Record Submission*

The dilemma of both the government and Osborne is that, while each alleges issues of material fact precluding its opponent's motion, neither successfully establishes proof adequate to achieve its goal of summary judgment. It remains unclear whether the contract reasonably can be interpreted only to require the contractor to isolate the cost and performance of Southern Cross demolition from other work, and whether the parties viewed the work as severable prior to award. These matters must be resolved before summary judgment is appropriate, as the evidentiary underpinnings of these motions differ significantly from proceedings under Board Rule 11 Submission Without a Hearing. Under that rule, the parties rest upon a settled record, and the weight to be afforded to any evidence rests within the discretion of the Board, Rule 13 Settling the Record. We face the converse in summary judgment, where we lack finality of the record and cannot assess the credibility of the evidence although we are empowered to determine whether further fact-finding is needed. *Anderson v. Liberty Lobby*, 477 U.S. at 250-52.

CONCLUSION

The general rule is that pure contract interpretation is a question of law that may generally be resolved by summary judgment. *P.J. Maffei Bldg. Wrecking Corp. v. United States*, 732 F.2d 913, 916 (Fed. Cir. 1984). It is not our practice to receive extrinsic evidence to change the terms of a contract clear on its face, *Beta Systems, Inc. v. United States*, 838 F.2d 1179, 1183 (Fed. Cir. 1988) (*citing SCM Corp. v. United States*, 675 F.2d 280, 284 (Ct. Cl. 1982), as unambiguous contract provisions must be given their plain and ordinary meaning. *L-3 Communications Link Simulation and Training*, ASBCA No. 54798, 06-2 BCA ¶ 33,294 at 165,099 *citing McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996). But, where as here, the meaning of the contract and the parties' intentions are both relevant and in dispute, there are questions of fact that obviate summary judgment. *See International Source and Supply, Inc.*, ASBCA Nos. 52318, 52446, 00-1 BCA ¶ 30,875 at 152,435 *citing Fairchild*

Industries, Inc., ASBCA No. 46197, 98-2 BCA ¶ 29,767 at 147,508 (a successful dispositive motion cannot succeed where the issue of intent is controverted).

We "conclude that it will be necessary for the Board to consider extrinsic evidence to ascertain the intent of the parties" with respect to the contract, *International Source and Supply*, 00-1 BCA ¶ 30,875 at 152,434. There are mixed questions of fact and law that pose triable issues sufficient to preclude a ruling of summary judgment for either party. We have considered other arguments advanced by the parties; none are persuasive on the existing record, and both motions are denied.

Dated: 19 February 2009

REBA PAGE
Administrative Judge
Armed Services Board
of Contract Appeals

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. 55030, Appeal of Osborne Construction Company, rendered in conformance with the Board's Charter.

Dated:

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