ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of--	)	
	)	
Tekkon Engineering Co., Ltd.	)	ASBCA No. 56831
	)	
Under Contract No. W91GY1-06-D-0002	)	

APPEARANCE FOR THE APPELLANT:	D. Lee Toedter, Esq. Orange Beach, AL
APPEARANCES FOR THE GOVERNMENT:	Craig S. Clarke, Esq. Army Chief Trial Attorney Peter F. Pontzer, Esq. CPT Bridget E. Keenan, JA Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE JAMES
ON RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

On 14 May 2009 Tekkon appealed to the ASBCA based on the CO's deemed denials of its 2 June 2008 claim for the first option year, its 20 August 2008 claim for the base year, and its 8 September 2008 letter seeking CO decisions on both such claims, under the captioned contract. The Board has jurisdiction of the appeal under the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 605(c)(5), 607.

On 19 April 2010, respondent moved for partial summary judgment on portions of appellant's claims. Appellant opposed the motion on 19 May 2010, respondent replied to the opposition on 19 July 2010 and appellant replied thereto on 18 August 2010.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

1. "CPA Contracting," Baghdad, Iraq awarded Contract No. W914NS-04-D-0147 (contract 0147) to Tekkon Engineering Co. (Tekkon), Ankara, Turkey, effective 29 June 2004 for Item 0001, aluminum sulfate containers, and Item 0002, chlorine gas cylinders. Contract 0147 did not contain an economic price adjustment (EPA) clause and did not expressly assign the risk of currency fluctuations to a party. (App. Statement of Undisputed Material Facts (ASUMF) ¶ 1; app. supp. R4, tab 1)

2. On 12 February 2005 Tekkon requested a $1,286,500 price adjustment under contract 0147, alleging a 16% transportation cost increase due to the worsening Iraqi security situation and a 10% U.S. dollar devaluation versus Turkish lira (ASUMF ¶ 2;

app. supp. R4, tabs 2, 24 ¶ 12, tab 25 ¶ 13). Tekkon's unsigned, undated proposal first used the undefined term "EPA" with respect to increased transportation costs. DCAA's 15 June 2005 audit report on Tekkon's requested price increase used the term "Economic Price Adjustment (EPA)." (ASUMF ¶¶ 11-12, app. supp. R4, tab 11 at 3, tab 12 at 1)

3. Bilateral Modification No. P00002 to contract 0147, executed by the "Joint Contracting Command-Iraq," on 24 June 2005, added Item 0009, "Economic Price Adjustment," for the price of $1,260,000 (ASUMF ¶ 14; app. supp. R4, tab 16).

4. Tekkon alleges that it based its bid on Contract No. W91GY1-06-D-0002 (contract 0002) "in full reliance" on the currency fluctuation portion of the $1,260,000 settlement under contract 0147 (app. opp'n at 16).

5. On 26 May 2006 the Joint Contracting Command–Iraq & Afghanistan (JCC-I/A) entered into contract 0002 with Tekkon for the purchase and delivery of water treatment chemicals and chlorine gas cylinders to various locations throughout Iraq for the Iraqi Ministry of Municipalities and Public Works (respondent's Statement of Undisputed Material Facts (SUMF) ¶ 1).

6. Contract 0002 was a firm fixed-price, IDIQ contract with a minimum amount of $3,000,000 and a maximum amount of $19,000,000, had a base year and three additional one-year options and contained the FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000) clause (SUMF ¶¶ 2, 3; R4, tab 1 at 106).

7. In contract 0002, § B, base year line items (CLINs) 0001, 0002, 0002AA, 0002AB and 0002AC were designated "FP-EPA" (fixed price-economic price adjustment), while CLINs 0003, 0004 and 0005 and all its sub-CLINs were not so designated (R4, tab 1 at 2-22). CLIN 0002 required Tekkon to "deliver filled chlorine gas cylinders…by providing all equipment, labor, transportation...to make said delivery to the locations identified in" CLIN 0005 at the $3,375, $350 and $840 unit prices stated respectively for CLINs 0002AA, 0002AB and 0002AC. CLIN 0004 specified aluminum sulfate in 25 kg bags or plastic drums at $10.50 per unit. CLIN 0005 and its sub-CLIN unit prices were not expressly identified as transportation prices "established" by Tekkon as of 26 May 2006. (R4, tab 1 at 2-22)

8. Section C of the contract provided in pertinent part:

> 8. **ORDERING/INVOICE PROCEDURES.**
>
> ....
>
> **(2) Performance under this contract shall be subject to the following ordering procedure**:
>
> (a) The Contractor shall incur costs under this contract only in the performance of Delivery Orders and amendments to Delivery Orders issued in accordance with this ordering procedure. No other costs are authorized without the express prior written consent of the [CO]. [Emphasis in original]

(SUMF ¶ 5; R4, tab 1 at 84)

9. The contract contained the FAR 52.216-2, ECONOMIC PRICE ADJUSTMENT – STANDARD SUPPLIES (JAN 1997) clause (EPA clause), which provided in pertinent part:

> (a) The Contractor warrants that the unit price stated in the Schedule for CLIN 0001 through SUBCLIN 3005CD [*i.e.*, all CLINs] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that--
>
> (1) Is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and
>
> (2) Is the net price after applying any standard trade discounts offered by the Contractor.
>
> ....
>
> (c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written

request to the [CO], by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increase in any contract unit price under this clause shall not exceed 25 percent of the original contract unit price.

(2) The increased contract price shall be effective—

(i) On the effective date of the increase in the applicable established price if the [CO] receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the [CO] receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the [CO] verifies the increase in the applicable established price.

(SUMF ¶ 6; R4, tab 1 at 104-05) Contract 0002 contained no provision expressly assigning the risk of currency fluctuations to a party (R4, tab 1 at 82-113).

10. On 19 March 2007 bilateral Modification No. P00009 exercised Option Period 1 (26 May 2007-25 May 2008) pursuant to the FAR 52.217-9 Option to Extend the Term of the Contract clause, stated that "the Government has already met the minimum ordering quantity required on the entire contract" and specified no minimum quantities for the option year (SUMF ¶ 7; R4, tab 17). Respondent issued delivery order No. 0005 on 5 May 2007 for $408,510 (R4, tab 19).

11. On 13 June 2007 Tekkon submitted to JCC-I/A a $387,331.90 claim for the base year, broken down to $160,692 (for items not in issue in present motion), $190,660 for depreciated U.S. dollar exchange rates and $35,979.90 for increased chlorine and aluminum sulfate transportation costs (app. supp. R4, tab 20 at 2-3; SUMF ¶¶ 9-11).

12. On 8 September 2007 Mr. Clinton Phillips of the Gulf Regional Division (GRD) of the Corps of Engineers sent Tekkon a spreadsheet and asked Tekkon to itemize on it the requested "economic price adjustment" (app. supp. R4, tab 21 at 1, 15, 21).

13. Tekkon's 18 September 2007 spreadsheet that it returned to Mr. Phillips itemized alleged transportation cost increases to and from the CLINs 0005AA, AD, AE, AG, AJ, BY, BZ, CB and CE delivery locations for chlorine gas and aluminum sulfate, showed that such costs began to increase on 8 September 2006, and that its last delivery was chlorine gas on 9 August 2007 (SUMF ¶¶ 27-29; R4, tab 39 at 5-6).

14. The CO denied Tekkon's 13 June 2007 claim on 18 October 2007, except for a $5,625 amount for increased transportation costs. Tekkon appealed that decision, which was docketed as ASBCA No. 56244 and later dismissed for lack of a signed CDA certification. (R4, tab 44; SUMF ¶¶ 13-14)

15. Prompted by Tekkon's 9 October 2007 e-mail to an Iraqi "Water Director" who inquired how to order chlorine powder and gas, GRD's Jim Hutchens, who was not a CO, told Tekkon on 12 October 2007 that its contract was cancelled, GRD had no plans for present or future delivery of water treatment chemicals, and had no money and would not pay for such chemicals (app. supp. R4, tab 17 at 5).

16. On 18 May 2008 CO John Moore asked Tekkon to sign a bilateral modification to contract 0002 to exercise "Option 2." Tekkon replied on 20 May 2008 that since it "received no orders for the first option year," a new minimum quantity for the second year should be added. CO Moore's 22 May 2008 response to Tekkon stated: "Considering the problems that we would have trying to bring chemicals across the border and the fact that we did not have any requirement for chemicals during the past twelve (12) months we have determined that it would be in the best interest of government to just let the contract expire on...25 May 2008." (R4, tab 48)

17. On 2 June 2008 Tekkon submitted a $249,240.00 claim for equitable adjustment to JCC-I/A for costs incurred and unrecovered because the government did not place any delivery orders during the first option year (SUMF ¶¶ 12, 34). Tekkon claimed the following: (a) $181,940.00 for wages of 238 man/months labor hired. (b) $22,000.00 for warehouse rental. (c) $15,600.00 for site office rental. (d) $22,500.00 for main office overhead. (e) $7,200.00 for pick-up vehicle rental. (SUMF ¶ 34)

18. On 20 August 2008 Tekkon submitted a base year claim to JCC-I/A for a total of $385,353.25, which was substantially the same as its 13 June 2007 claim, except that Tekkon signed the CDA certification (SUMF ¶¶ 15, 20).

19. The base year claim consisted of two sections. The first section (not in issue in the present motion) is in the amount of $160,692 and consists of four events that appellant avers were beyond its control and caused it to lose money (SUMF ¶ 20; R4, tab 56).

20. The second section of appellant's base year claim is divided into § 2(a) and § 2(b) (SUMF ¶ 21). Section 2(a), designated "EPA Due to US Dollar Devaluation," seeks $190,660.00 due to the U.S. dollar's depreciation against local currency in the base year (SUMF ¶ 22; R4, tab 56 at 3). Section 2(b), designated "EPA Due to Extreme Increase of Transportation Costs," seeks $34,001.25 for increased costs of transporting water purification chemicals (SUMF ¶ 25; R4, tab 56 at 3).

21. On 14 May 2009 Tekkon filed an appeal with the ASBCA based on the CO's deemed denials of its 21 August 2008 e-mail forwarding its 20 August 2008 claim for the base year, its 5 June 2008 e-mail forwarding its 2 June 2008 first option year claim and its 8 September 2008 letter seeking decisions on both claims, which appeal was docketed as ASBCA No. 56831 on 18 May 2009. CO Michael Hunter's 4 July 2009 decisions denied Tekkon's 2 June 2008 and 20 August 2008 claims (except allowing $5,625 on the latter) (compl., attachs.). CO Connie Massenburg's 7 April 2010 final decision denied Tekkon's 20 August 2008 claim in its entirety (gov't mot., attach.).

22. Tekkon's "free employee" Mehmet Zeki Albulak, and General Manager, Riza Cengiz Atalay, each stated on 17 May 2010 that when Tekkon bid on contract 0147 the U.S. dollar in relation to Turkish lira was relatively stable, but during performance the dollar value eroded by 10%; under contract 0147 it claimed $514,000 for currency changes which amount was in the $1,260,000 settlement of Tekkon's contract 0147 claim; and each personally believed that the CO would equitably compensate Tekkon for increased contract 0002 performance costs in the same manner as under contract 0147 (Albulak aff. app. supp. R4, tab 24, ¶¶ 5-7, 9, 14, 20-21; Atalay aff. app. supp. R4, tab 25, ¶¶ 4-8, 10, 21-22).

DECISION

Respondent moves for summary judgment with respect to appellant's claims for $34,001.25 due to increased base year transportation costs (gov't mot. at 10-14), $190,660 arising from base year currency fluctuation (*id*. at 14-15), and $249,240 for the five sub-claims in the first option year (*id*. at 15-16). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Summary judgment properly may be granted to a party when the non-moving party fails to offer evidence on an element essential to its case and on which it bears the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

I.

Tekkon's base year EPA claim seeks $34,001.25 for increased costs to transport water treatment chemicals, specifically chlorine gas and containers (CLIN 0002) and aluminum sulfate (CLIN 0004) (SOF ¶¶ 13, 20). Respondent contends that: (1) the FAR 52.216-2 EPA clause is authorized only when a contract requires standard supplies for which the contractor has an established catalog or market price, pursuant to FAR 16.203-4(a)(1)(ii); (2) the only supplies in contract 0002 that have an established catalog or market price are the water treatment chemicals and chlorine gas cylinders; (3) diesel fuel was not a deliverable supply item, but rather Tekkon's material cost to fuel its delivery trucks, and contract 0002 did not include the FAR 52.216-4 EPA–LABOR AND MATERIAL Clause, which addresses such a material cost increase; (4) hence the material costs in Tekkon's transportation claim were not subject to EPA (gov't mot. at 10-13), and (5) only CLINs 0001 and 0002 prescribed EPA and the "delivery CLINs" were not subject to EPA, demonstrating that contract 0002's EPA clause was to be used only for "supply items" (gov't reply br. at 6). Respondent argues alternatively that: (i) fuel prices began to increase on 8 September 2006, (ii) Tekkon did not notify the CO of such increases until 18 September 2007, (iii) the FAR 52.216-2 clause made an EPA effective on 18 September 2007 when the CO received Tekkon's EPA request, (iv) no deliveries were made after 18 September 2007, so Tekkon is entitled to no EPA (gov't mot. at 13-14).

To establish an EPA increase, the FAR 52.216-2 EPA clause requires a contractor to show that: (i) it had an established price as defined in the clause in effect on the contract date; (ii) its established price was increased; (iii) it requested the CO in writing to increase such established price; and (iv) it satisfied the criteria for the EPA increase, including the effective date and prospective applicability limitations in FAR 52.216-2(c) (SOF ¶ 9).

The undisputed facts show that: (i) in the appeal record, CLIN 0005 and its sub-CLIN unit prices were not expressly identified as "established" prices of Tekkon for transportation as of 26 May 2006 and there is no other proof that it had established prices for transportation (SOF ¶¶ 7, 9); (ii) there is no evidence of increases in Tekkon's established transportation price(s) if any; (iii) on 13 June 2007 Tekkon requested in writing $35,979 for increased transportation costs (SOF ¶ 11) and on 18 September 2007 first itemized and identified transportation cost increases to and from the CLINs 0005AA, AD, AE, AG, AJ, BY, BZ, CB and CE delivery locations for chlorine gas and aluminum sulfate (SOF ¶ 13); and (iv) Tekkon's last delivery was chlorine gas on 9 August 2007 (SOF ¶ 13).

Therefore, Tekkon has failed to establish the foregoing elements required for an EPA. Even assuming, contrary to the FAR 52.216-2 clause, that Tekkon's transportation "cost" was identical to its "established price" for transportation, in accordance with FAR 52.216-2(c)(2), Tekkon's EPA notice became effective on 18 September 2007, barring any EPA for deliveries prior to such date (SOF ¶ 9). Summary judgment may be granted to a party when the non-moving party (here Tekkon) fails to offer evidence on an element essential to its case and on which it bears the burden of proof at trial. *Celotex*, 477 U.S. at 322-23.

Tekkon argues that contract 0147 for similar supplies had no EPA clause, it was modified to provide a $1,260,000 EPA adjustment, which establishes the intent to provide an EPA adjustment in the instant contract, the FAR 52.216-4 EPA clause should be incorporated into the contract (app. resp. at 13-14, 20), and a FAR 16.203-3 determination (that it is necessary to protect the contractor and the government against significant fluctuations in labor and materials costs or to provide for contract price adjustment in the event of changes in the contractor's established prices) is not in the appeal record from which to ascertain the CO's intent regarding the scope and application of contract 0002's EPA clause (app. reply br. at 5-9).

Tekkon's arguments are untenable. Justifiable reliance on a prior course of dealing requires proof of the same contracting agency, the same contractor, and essentially the same contract provisions. *T&M Distributors, Inc.*, ASBCA No. 51405, 00-1 BCA ¶ 30,677 at 151,509. It is not certain that contracts 0147 and 0002 were awarded by the same contracting agency. Those contracts involved the same contractor. (SOF ¶¶ 1, 3, 5) Contract 0147 had no EPA clause while contract 0002 had the FAR 52.216-2 EPA clause (SOF ¶¶ 2, 9), so their provisions were not essentially the same. We see no material similarity in the absence in the two contracts of a FAR 52.216-4 clause allowing an EPA for increased material (fuel) costs. Moreover, since Tekkon's contract 0147 claim sought increased fuel costs, the appropriate time to raise the question about whether the FAR 52.216-2 clause permitted an EPA for material cost increases was before contract award, not during litigation.

Finally, a single prior payment for increased transportation costs under contract 0147 does not constitute a course of dealing. *See T&M,* 00-1 BCA at 151,509-10 (*A. C. Clayton and Associates*, ASBCA No. 34055, 87-2 BCA ¶ 19,853, in which one prior contract established no course of dealing regarding unusual switch cleaning, and the appeal was denied on other grounds, was distinguished from *T&M*, where a course of dealing regarding the pattern of government orders was established by seven prior contracts and the early years of the contracts in dispute; appeal was sustained); *see also Davis Group, Inc.*, ASBCA No. 48431, 95-2 BCA ¶ 27,702 at 138,092 (cases where a course of dealing has been found have involved consistent Government actions over the course of several contracts between the same parties. *L. W. Foster Sportswear Co. v.*

United States, 405 F.2d 1285 (Ct. Cl. 1969) (200,000 jackets delivered over the performance of 5 or 6 previous contracts)).

Tekkon assumes without proof that the parties mutually intended to include the non-mandatory, FAR 52.216-4 EPA clause. We are not persuaded that a FAR 16.203-3 determination would affect the interpretation of the EPA clause set forth above on this record.

Tekkon also argues in its 18 August 2010 reply that its supplemental Rule 4 documents show "that genuine issues of fact exist" regarding the parties' course of dealing under prior contract 0147 (app. resp. at 13-16) and "increased transportation costs and entitlement to adjustment is [sic] a genuine issue of material fact" (app. reply br. at 1-2). Tekkon's arguments are invalid. Respondent took no genuine issue (ignoring its quibbles about Tekkon's dates) with any of the facts in the ASUMF and its supplemental Rule 4 documents that we included and cited in our foregoing SOF (gov't reply br. at 2-4). Whether Tekkon's transportation costs increased is immaterial because the FAR 52.216-2 clause provides an EPA not for increases in a contractor's costs but for increases in a contractor's "established price" and Tekkon's established price for transportation or for diesel fuel is not in the record (SOF ¶¶ 7, 11). Entitlement to an EPA adjustment on this record is not an issue of material fact but a legal issue.

Accordingly, we hold that respondent is entitled to judgment as a matter of law on claim 2(b).

II.

With respect to Tekkon's $190,660 base year currency fluctuation claim, § 2(a), respondent argues that the contract was awarded and paid in U.S. dollars and most of the contracted work, such as purchase and transportation of chemicals, would be paid in Turkish lira. These circumstances presented a currency fluctuation risk that Tekkon assumed by virtue of this fixed price contract. Thus, cost increases due to weakening of the U.S. dollar do not entitle Tekkon to additional compensation. (Gov't mot. at 14-15)

Tekkon acknowledges that respondent's motion states the general rule for the risk of currency fluctuations. As an exception to the foregoing rule, Tekkon asserts that it based its bid on contract 0002 "in full reliance" on the portion of the $1,260,000 settlement it received for currency fluctuation under contract 0147 (SOF ¶ 4). In support of that assertion, Tekkon's Mehmet Zeki Albulak, and Riza Cengiz Atalay, stated on 17 May 2010 that when Tekkon bid on contract 0147 the U.S. dollar in relation to Turkish lira was relatively stable; during performance the dollar value eroded by 10%; under contract 0147 it claimed $514,000 for currency changes; such amount was in the $1,260,000 settlement of Tekkon's contract 0147 claim; and each personally believed that

the CO would equitably compensate Tekkon for increased contract 0002 performance costs in the same manner as under contract 0147 (SOF ¶ 22).

Neither Mr. Albulak nor Mr. Atalay stated that he communicated his foregoing views and beliefs to the CO before award of contract 0002. "The parties' intent must be gathered from the instrument as a whole...without...regard to the subjective unexpressed intent of one of the parties." *ITT Arctic Services, Inc. v. United States*, 524 F.2d 680, 684 (Ct. Cl. 1975); *see also Andersen Consulting v. United States*, 959 F.2d 929, 934 (Fed. Cir. 1992) ("subjective unexpressed intent of one of the parties" is irrelevant). Thus, there is no triable issue of fact with respect to how Tekkon priced contract 0002 and what were its reasonable expectations with respect to U.S. dollar erosion. The law is clear that under a fixed-price type contract, such as contract 0002, the contractor bears the risk of currency fluctuations. *See Elter, S.A.*, ASBCA Nos. 52792, 53082, 02-1 BCA ¶ 31,667 at 156,485-86. Accordingly, respondent is entitled to summary judgment as a matter of law on Tekkon's claim § 2(a).

III.

Respondent asserts that it placed no delivery order under option period 1, which specified no minimum quantity of work and which it exercised pursuant to the FAR 52.217-9 Option to Extend the Term of Contract clause (SOF ¶ 10). Citing *Five Stars Electronics, Inc.*, ASBCA No. 44984, 96-2 BCA ¶ 28,421, respondent argues that since it specified and ordered no additional work in option period 1, Tekkon cannot recover any costs it incurred during option period 1 (gov't mot. at 15-16).

Tekkon points to the 12 October 2007 notification to Tekkon by GRD's Jim Hutchens that its contract was cancelled, GRD had no plans for present or future delivery of water treatment chemicals, and had no money and would not pay for such chemicals (SOF ¶ 15), and the 22 May 2008 statement of CO John Moore that "we did not have any requirement for chemicals during the past twelve (12) months," *i.e.*, after 23 May 2007 (SOF ¶ 16). Tekkon argues that issuance of delivery order No. 0005 on 5 May 2005 (SOF ¶ 10) during the base period is no evidence of any *bona fide* government need for option period 1 work (app. reply br. at 17). Tekkon concludes that the exercise of option period 1 was not in good faith and "tantamount to...an illegal action," the government did not furnish in discovery the CO's determination of a bona fide need for the contract's first option year work required by FAR 17.207(f), and this is a disputed material fact that precludes the grant of respondent's motion (app. resp. at 17-18, 21-24).

To identify a disputed material fact, Tekkon points to the absence of a FAR 17.207(f) determination that the government had funds available to procure its existing needs under option period 1. But such a determination is immaterial. *Freightliner Corp. v. Caldera*, 225 F.3d 1361, 1365 (Fed. Cir. 2000), held that "even if TACOM [the

government agency] failed to comply with FAR 17.207(f), it would not render the P00051 modification [that exercised the disputed option] ineffective.... FAR 17.207(f)...does not exist for the benefit of the contractor." We conclude that there is no triable issue of material fact with respect to whether on 19 March 2007 the government's exercise of option period 1 was in good faith and it had a *bona fide* need for the option period 1 work. Accordingly, we hold that respondent is entitled to summary judgment on Tekkon's option period 1 claim.

CONCLUSION

For the reasons set forth above, respondent's motion for partial summary judgment is granted with respect to Tekkon's claims § 2(b) for transportation costs, § 2(a) for currency fluctuation and for its option period 1 costs.

Dated: 28 September 2010

DAVID W. JAMES, JR.
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. 56831, Appeal of Tekkon Engineering Co., Ltd., rendered in conformance with the Board's Charter.

Dated:

____

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