Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

GRANTED IN PART: December 6, 2000

GSBCA 14765

McTEAGUE CONSTRUCTION CO., INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

L. Wesley Nichols, P.A., Palm Beach Gardens, FL, counsel for Appellant.

Robert C. Smith and Kevin J. Rice, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman),[1] **BORWICK**, and **DeGRAFF**.

DANIELS, Board Judge.

In this decision, we analyze and resolve claims made by a construction contractor under numerous delivery orders issued to it by the General Services Administration (GSA). We find some validity to most of the claims, but conclude that a lack of documentation as to the amount of damages precludes an award of more than $39,678.41 -- about twenty-eight percent of the total sought.

[1]The hearing in this case was conducted by Board Judge Robert W. Parker. Judge Parker subsequently began a long-term temporary assignment, and the case was reassigned to Judge Daniels. The Board afforded the parties an opportunity to supplement the record, for the benefit of the newly-assigned judge, and to make additional presentations. The parties declined this invitation.

The contract

On January 3, 1995, GSA and McTeague Construction Co., Inc. (McTeague) entered into an indefinite quantity contract for miscellaneous building repairs in a currently-famous trio of counties in Florida -- Dade, Broward, and Palm Beach. Appeal File, Exhibit 1 at 2, 49. The contract was effective for one year and allowed GSA to exercise options for two additional years. The agency exercised the options available to it, extending the contract period to February 7, 1998. Id., Exhibits 1 at 49, 5 at 1-4.

Under the contract, the Government could place written delivery orders for the performance of work at any of various locations within the three counties. Each order was to list the quantities and types of work to be performed by the contractor, the time of day (normal working hours or otherwise) when the work was to be done, and the starting and completion dates of the project. A delivery order was not to be issued until after the Government and the contractor had negotiated and agreed on the time for performance. The contractor was required to prosecute diligently all work encompassed by each delivery order and complete that work in a timely fashion. Appeal File, Exhibit 1 at 49-51.

The contract contained a long list of line items of work which might be performed under delivery orders; a base price and descriptive notes were provided for each line item. Appeal File, Exhibit 1 at 302-91.[2] When one of these items was included in an order, the contractor was to be paid for its performance by multiplying the number of units by the specified price. (That price was the base price reduced by a fixed percentage. For example, the fixed percentage was fifteen percent for work performed during regular working hours in the contract's final year.) When the Government wanted the contractor to perform work which was not included in a line item, it was to negotiate with the contractor a price for that work, and agree on such a price, before issuing the delivery order. The Government's contracting officer could unilaterally price non-line item work only if agreement could not be reached. Even then, if the contractor disagreed with the contracting officer's determination, it could make a claim for additional payment. The claim would then be resolved under the disputes clause of the contract, in accordance with the Contract Disputes Act of 1978. Id. at 3, 44-45, 50.

The contract further provided that after the contractor completed a delivery order, the Government and the contractor were to conduct a joint final inspection of the project. If it was found that the quantities of work performed were different from the quantities ordered, "the necessary adjustments in quantities on the work order will be made on the basis of the

[2]For example, the very first line item is "1.01 PARTITION - GYP BD DEMOUNTABLE," with a unit price of "$27.04 LM." This item is contained within section 1, "REMOVE AND DISCARD - ARCHITECTURAL." Appeal File, Exhibit 1 at 302. The notes explain the meaning of this notation: When a delivery order included the removal of a demountable gypsum wallboard partition, the contractor would also have to remove electrical conduit and circuit to the nearest box, but would not have to remove plumbing integral to or attached to the partition. The contractor would have to protect adjacent surfaces and dispose of debris. The Government would pay for this work at the base rate of $27.04 per linear meter of partition. Id. at 350, 376-77.

quantities installed and/or removed in the final work as shown on the inspection report." The contractor then would be paid for work performed. Appeal File, Exhibit 1 at 51.

During the period of time encompassed by the delivery orders relevant to our dispute, what actually transpired on the job was quite different from the nice, neat scenario envisioned in the contract. GSA officials sometimes directed McTeague to begin work before an applicable delivery order was issued.[3] On other occasions, those officials orally directed changes in the work or added elements to a project but did not reduce those orders to writing. A joint final inspection of work was made on few if any of these delivery orders. Transcript at 17-23, 74-77, 153-56, 171-74, 201-03, 427-28.

McTeague became concerned that it had not been properly compensated for the work it performed for GSA on numerous projects, and on April 3, 1998, it submitted to the contracting officer a demand for additional payments.[4] The contractor claimed a specific amount of money on each of seventeen different projects. The amounts total $139,353.11, but the claim is said to be for $170,850.60. Appeal File, Exhibit 7. On October 2, 1998, McTeague claimed an additional $33,034.63 as owing on a different project. Id., Exhibits 8, 10.36. The contracting officer rendered a decision on all of these claims on November 3, 1998. She granted two of the claims in full and seven in part; she denied the rest. Id., Exhibit 10. McTeague appealed the contracting officer's decision on every one of the claims

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[3]For example, according to delivery orders themselves, work at the Social Security Administration office on the fifth floor of the Claude Pepper Federal Building in Miami began on December 9, 1996, but the delivery order applicable to this work, number P04-97-RS-0030, was not issued until January 8, 1997; and work at the ninth floor conference room of the United States Coast Guard's office at Brickel Plaza in Miami began on April 3, 1997, but the delivery order applicable to this work, number P04-97-RS-0092, was not issued until June 18, 1997. Appeal File, Exhibits 10.1, 10.28; Respondent's Supplemental Appeal File, Exhibits 1 at 49, 5 at 5.

With regard to the designation of Exhibits 10.1 and 10.28: Exhibit 10 of the Appeal File, the contracting officer's decision on McTeague's claims, itself contains fifty-three attached documents. Each attachment to Exhibit 10 of the Appeal File is referenced by showing a decimal point after Exhibit 10, followed by the number of the attachment. For example, the first attachment to the contracting officer's decision is referenced as Appeal File, Exhibit 10.1.

[4]This is the first group of claims that appears in our record. McTeague sent the contracting officer an earlier letter, dated March 3, 1998, requesting a final decision on fifteen different projects, but this letter does not specify any amounts of money. Appellant's Exhibit 1. A "claim," for our purposes, is "a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract." D. L. Braughler Co. v. West, 127 F.3d 1476, 1480 (Fed. Cir. 1997); William D. Euille & Associates, Inc. v. General Services Administration, 00-1 BCA ¶ 30,910, at 152,510. Because the March 3 letter is not a demand or assertion seeking any of these things, it may not be considered a claim.

other than the two which were granted in full. In this opinion, we consider and rule on the appealed claims. We address the claims in the same order in which they are discussed in the parties' briefs.

Delivery order number P-04-97-RS-0030

In its posthearing brief, McTeague claims that it is entitled to be paid $16,607.66 more than payments it has already received for work performed at the Social Security Administration's office on the fifth floor of the Claude Pepper Federal Building in Miami. Appellant's Brief at 12; Appellant's Exhibit 13; Transcript at 35-36. The contracting officer denied this claim. Appeal File, Exhibit 10 at 1-2. We consider the claim items under the three headings that follow.

1. Drywall

On this order, as well as four others, McTeague contends that it should be paid for the supply and installation of gypsum wallboard (or "drywall") at the rates prescribed in the contract for line items 59.02 and 59.04, rather than the rates prescribed for line items 58.02 and 58.04. The former line items refer to two-hour rated wallboard and contain base prices of $60.79 per square meter (for wallboard up to ten feet high) and $71.77 per square meter (for wallboard ten to fourteen feet high), respectively. The latter line items refer to wallboard five-eighths of an inch thick and contain base prices of $39.27 and $46.70 per square meter. Appeal File, Exhibit 1 at 321. The parties agree that a substitution of rates was agreed to at a meeting which included McTeague's owner and president, Michael McTeague, and the GSA Miami Customer Service Center manager, Edward "Butch" Zachary. The parties also agree that the purpose of the substitution was to allow the contractor additional compensation for drywall installation at a time when, due to a temporary shortage of the material in South Florida, 5/8" drywall was scarce and highly priced. The parties do not agree, however, on when the meeting occurred or to what jobs the substitution was to apply.

According to Mr. McTeague, the agreement as to rate substitution was "a blanket thing" that "was for the rest of the duration" of the contract. Transcript at 52-53, 88. "There was no mention -- none -- about just one job because I was talking about all of them because we had us several jobs going at the same time." Id. at 430. Mr. McTeague does not remember the date of the meeting. Id. According to Mr. Zachary, the agreement pertained solely to delivery order number P04-97-RS-0106, which involved work at the Department of Labor's office on the seventh floor of Brickel Plaza in Miami. Id. at 218-22, 237. That delivery order shows an order date of July 28, 1997, a starting date of July 30, 1997, and a completion date of September 30, 1997. Appeal File, Exhibit 10.37; Respondent's Supplemental Appeal File, Exhibit 6 at 12-14. Delivery order -0106[5] and its amendments include line items 59.02 and 59.04 for drywall work, but do not include line items 58.02 or 58.04. Appeal File, Exhibit 37, 37a, 37b, 37c; Respondent's Supplemental Appeal File, Exhibit 6.

[5]The parties have referred to each delivery order by its last four digits. We follow the same convention here.

We consider Mr. Zachary's memory of the agreement more credible than Mr. McTeague's. The record contains no documentary evidence of the agreement. There is no indication in any delivery order which is part of the record, other than -0106, that any drywall installation was to be compensated at the prices for line items 59.02 or 59.04. One would expect that if the agreement really had consequences as far-reaching as McTeague contends, extending to five different delivery orders, the contractor would have had it memorialized in some document and could surely tell us when it was made. Mr. Zachary's version fits the documentation available to us, and the failure to memorialize the agreement is more understandable given the limited scope suggested by this witness. We therefore reject McTeague's position that "[t]he only logical interpretation of this agreement is that it covered all jobs affected during this time, in this geographical area, under this contract." See Appellant's Reply Brief at 4.

Furthermore, even if we had not accepted GSA's position on the drywall issue as broadly as we do, we would agree with the Government that the agreement could not reasonably be construed to apply to delivery order -0030. Work under that order was performed well before the agreement came into existence, and even under McTeague's interpretation, the agreement applied only to jobs which were ongoing when the agreement was reached. Compare Appeal File, Exhibit 10.4; Respondent's Supplemental Appeal File, Exhibit 1 at 11-14 (completion date of delivery order -0030 was January 31, 1997) with Appeal File, Exhibit 10.37; Respondent's Supplemental Appeal File, Exhibit 6 at 12-14 (date of delivery order -0106 was July 28, 1997).

2. Additional line item work

McTeague maintains that it should be paid more money for several line items because for those items, more work was performed than the quantities on which GSA based its payments. Transcript at 38, 44.

a. Three of the items may be dispensed with quickly. McTeague asks to be paid for removing and reinstalling seven "exit" light fixtures (line item 22.14) and installing thirty-eight fixture whip conductors (line item 143.15). The delivery order as amended includes these items in these quantities. Appeal File, Exhibits 10.1, 10.4; Respondent's Supplemental Appeal File, Exhibit 1 at 1-2. McTeague also asks to be paid for installing forty-nine square meters of drywall up to ten feet high, rather than eighteen. The original delivery order specifies thirty-one square meters and the amendment specifies eighteen, so together, these documents include all forty-nine square meters for which McTeague seeks payment. McTeague was paid the full delivery order amount. Id. Thus, the contractor has already been paid for the work encompassed in these three line items of the claim.

b. McTeague also maintains that it should be paid for additional quantities of two electrical line items, removing and discarding ninety-seven lay-in fluorescent light fixtures (line item 3.16) and installing 147 Government-furnished lay-in fluorescent light fixtures (line item 159.01). The basis of this portion of the claim is a list of items which a subcontractor, Imperial Electrical Of Fort Lauderdale, Inc., submitted to McTeague as having been completed on this job. Transcript at 45; Appellant's Exhibit 15.

We set out in this paragraph the evidence relevant to this matter: Joe Jones, a GSA building management specialist who is familiar with the Claude Pepper Building and the work McTeague performed there, testified that when the work was performed, GSA policy for renovations was to retrofit light fixtures, rather than discard and replace them. Transcript at 291-92. The delivery order made no mention of discarding lay-in fluorescent light fixtures; instead, it called for removing and reinstalling ninety of those fixtures (line item 22.10). Appeal File, Exhibit 10.4 at 4. A GSA inspector found that ninety lay-in fluorescent light fixtures were actually installed. Respondent's Supplemental Appeal File, Exhibit 1 at 18. The inspector's report shows, too, that ninety-seven such fixtures were removed and discarded, but that line is crossed out. Id. Mr. Jones also testified that if McTeague had actually installed 147 Government-furnished fixtures, in addition to the ninety which were reinstalled, the total number would have been excessive for the 6,000-square foot area of this project. Transcript at 297-98. Whether the area of the project was really 6,000 square feet is uncertain, however, since the delivery order shows that 9,000 square feet of floor were to be flash-patched. Appeal File, Exhibit 10.4 at 4. The inspector's report shows that 147 Government-furnished fixtures were installed, but that line is crossed out. Respondent's Supplemental Appeal File, Exhibit 1 at 18.

As with many issues in this case, the evidence is insufficient for us to be confident of the correct result. The key documents, the lists of work performed, were compiled by two different people at two different times. Neither the Imperial Electrical employee who drew up his firm's list nor the GSA inspector was called as a witness in the case. Thus, we have no opportunity to assess, through evaluation of testimony, the veracity of either list (or the meaning of the cross-outs on the inspector's report). As with all of the contractor's claims, McTeague bears the burden of proof on this one. To prevail, McTeague must persuade us that a preponderance of the evidence supports its position. Twigg Corp. v. General Services Administration, GSBCA 14386, et al., 00-1 BCA ¶ 30,772, at 151,975 (citing Lisbon Contractors, Inc. v. United States, 828 F.2d 759, 767 (Fed. Cir. 1987)). GSA's position on the light fixtures is not altogether convincing. The inspector's report is not clear, and Mr. Jones's conclusion as to the reasonableness of the number of fixtures claimed to have been installed is suspect in that it is based on an assumption as to area which is inconsistent with the delivery order. Nevertheless, McTeague's position cannot prevail because it lacks sufficient support. Imperial Electrical's list appears to be mistaken in applying a line item for discarding fixtures when it probably should have used the line item for reinstalling them, and the contractor has not provided persuasive evidence that it received from the Government and installed any fixtures other than the ones which were already in place when work began.

c. McTeague's claim includes five other line items, as well: remove and store thirty-four lock key cylinders (line item 4.12), remove and reinstall one metal door frame (line item 20.03), remove and reinstall one Dutch door (line item 20.40), and paint two coats on three square meters of flat wood (line items 94.05 and 94.07). The total base price of these items is $282.31. With the eighteen percent discount applicable to line item work performed under this delivery order, the net total value is $231.49. Mr. McTeague testified that the quantities on which the base prices for each line item are founded are the actual quantities of work performed on the job. Transcript at 44. GSA does not specifically challenge this portion of the claim. We award the uncontested $231.49 claimed.

3. Non-line item work

The claim includes three groups of non-line item expenses: flash-patching the floor, adjusting sprinkler heads, and additional work ordered by GSA.

a. The delivery order includes non-line items of $2,500 for flash-patching 9,000 square feet of floor and $3,040 for adjusting 152 sprinkler heads and fitting them with new escutcheons. Appeal File, Exhibit 10.4 at 4. According to Mr. McTeague, these prices were inserted in the order by GSA unilaterally. Mr. McTeague further testified that the contractor's actual cost for the labor and materials required to perform the flash patch work was $3,658.21, and that a subcontractor charged McTeague $4,835.16 to perform the sprinkler work. With McTeague's standard twenty percent markup for overhead and profit, he said that the values of these two items of work were $4,389.85 and $5,802.19, respectively. McTeague maintains that it is entitled to additional payments in the amount of $4,389.85 less $2,500, or $1,889.85, for flash-patching the floor, and in the amount of $5,802.19 less $3,040, or $2,762.19, for adjusting the sprinkler heads. Transcript at 33-35; Appellant's Exhibits 13-14, 16-18.

Under the contract, when the contractor and the agency are unable to agree on a price for non-line item work before a delivery order is issued, the contractor need not accept the price unilaterally put in the order by the agency; it may instead seek a determination of an appropriate price through the disputes process. The evidence is that the prices for flash-patching and sprinkler adjustment were set by GSA unilaterally, so McTeague may ask us, in this proceeding, to determine appropriate prices for the work. We will not select figures other than the ones put forth by the Government, however, unless the claimant persuades us that we should do so. The claimant not only "bears the burden of proving the fact of loss with certainty," but also has "the burden of proving the amount of loss with sufficient certainty so that the determination of the amount of damages will be more than mere speculation." (Twigg, quoting Lisbon Contractors).

Unfortunately for McTeague, it has not proved with sufficient certainty that the amounts it urges are soundly based. Virtually all of the alleged cost of flash-patching the floor consists of labor charges. The contractor's daily time records show that floor patching occurred on four separate days. On each of those days, six or seven men each worked at least eight hours, performing many different kinds of work. It is impossible to determine from these records how many hours were devoted to floor patching. Thus, we have no idea of the appropriate labor charge for this work. See Appellant's Exhibit 14. The document offered in support of the claim for additional payment for sprinkler adjustment is a bill from subcontractor Bolt Fire Protection, Inc., in the amount of $4,835.16. The bill shows a charge for labor hours and materials, but does not explain what work was performed during these hours and with these materials. Appellant's Exhibit 18. The delivery order contains a line item (160.02) for relocating fifty-five existing sprinkler heads, at a base price of $5,863. Appeal File, Exhibit 4 at 4; Respondent's Supplemental Appeal File, Exhibit 1 at 14. Was Bolt's invoice for performing that line item work or the non-line item work? We cannot say. Thus, we cannot find that the appropriate price for the non-line item work was any particular figure. We decline to increase GSA's payment to McTeague for either the flash-patching or the sprinkler adjustment non-line item work.

b. The third group of non-line item expenses in the claim includes two items of additional work -- a copier service call ($159.60) and installation of a "now serving" sign ($549.02). Appellant's Exhibit 13 at 3. McTeague cites no evidence in support of this portion of the claim, Appellant's Brief at 13, and we have found none in the record. (The claim's mention of these expenses does not constitute evidence. The only witness asked about these items was GSA's Mr. Jones, and he had no knowledge of them. Transcript at 309-12.) The contractor has failed to carry its burden as to these expenses.

In summary, we grant $231.49 of the $16,607.66 claimed for delivery order -0030.

Delivery order number P-04-97-RS-0059

McTeague claims that it is entitled to be paid an additional $16,128.50 for work performed at the Department of Transportation Office of Inspector General's office on the third floor of the Fort Lauderdale Federal Building and Courthouse. The contracting officer decided that only $85.51 of this claim is due to the contractor. Appeal File, Exhibit 10 at 2-4.

1. Preliminary matter

McTeague suggests that an examination of the merits of this claim is unnecessary, since GSA has already agreed to make full payment. The Government should be estopped, the contractor maintains, from denying liability.

A little background is needed to consider this argument. Before the contracting officer issued her decision on the bulk of the McTeague claims (including this one), the contractor petitioned this Board to direct her to issue a decision. Appellant's Exhibit 7. While the petition was pending before the Board, the parties submitted to us a joint status report signed by both counsel. The status report includes these paragraphs:

> 4. At the conclusion of [the previous day's] settlement conference, the Appellant and Respondent were able to agree that certain amounts were owed to Respondent by Appellant [sic], as listed on the attached Exhibit "A" incorporated herein and made a part hereof, and Appellant [sic] is taking immediate action to make said payment in the total amount of $40,129.76.
>
> 5. In exchange for this payment by the Respondent, Appellant has agreed to release in their entirety [two claims which are not involved in this appeal]. In addition, the remainder of the asserted claims will be reduced by the Government's payment of outstanding balances on certain orders, and Respondent [sic] is expected to reduce the amount of its remaining claims by the amount of $36,867.89, thereby reducing the total amount in dispute.

Appellant's Exhibit 4. Exhibit A to the report includes the statement, as to delivery order -0059: "GSA shall pay the amount of $3,170.32." Id.

The report was transmitted to the Board by Government counsel. Counsel wrote this note on the copy she sent to McTeague's attorney: "Pursuant to our telephone conversation,

I am requesting that the Contracting Officer . . . review Order Number P04-97-RS-0059 for Ft. Lauderdale OIG, and make immediate payment for any outstanding balance, which we both recalled was approximately $16,000.00, in addition to the $3,170.32 recited on Exhibit A." Appellant's Exhibit 4 at 1.

McTeague's estoppel argument (which is not explained, Appellant's Brief at 15) goes to the note written by Government counsel. The argument fails, among other reasons, because the note does not commit the Government to any action, other than that the contracting officer would issue a decision on the claim -- something which the Contract Disputes Act, 41 U.S.C. § 605(c)(1) (Supp. IV 1998), already required her to do. Counsel's promise was simply that she would ask the contracting officer to make a particular decision. It was not that the contracting officer would make that decision.

The more interesting question is whether the status report constituted a contract which obligated GSA to make certain payments, including $3,170.32 on the claim under delivery order -0059. The language of the report is garbled, using "appellant" to mean McTeague though no appeal had yet been filed, and often transposing the terms used to signify GSA and the contractor/petitioner. Nevertheless, the meaning of the report is apparent: GSA was to pay McTeague $40,129.76[6] on all the claims extant at the time, and in exchange, McTeague was to withdraw two claims and reduce the amount of the other claims by $36,867.89. If this was ever intended to be a contract,[7] the parties clearly did not treat it as one. GSA paid McTeague something less than envisioned -- on the order of twenty-five to thirty thousand dollars. Transcript at 32. McTeague did not withdraw any of the claims; instead, the two which were to have been "released in their entirety" remained to be decided by the contracting officer. See Appeal File, Exhibit 10 at 1. Nor did McTeague reduce by as much as promised the amounts of the claims other than the two that were to have been withdrawn. The contractor maintained in its complaint that the total amount at issue in those other claims as of September 21, 1998, three weeks after the date of the status report, was $146,018.59 -- only $9,927.35 less than the total of those claims when originally made. Compare Complaint ¶ 3 with Appeal File, Exhibit 7 at 2-3. Since the status report, even if meant to be a contract, has been breached by both parties, we ascribe no significance to it.

Now we turn to the specific items included in the claim relating to delivery order -0059.

2. Line item work

Mr. McTeague testified that his firm performed quantities of electrical and drywall line-item work additional to those which were included in the delivery order. The line items at issue are 3.14 (remove and discard electrical box for device or outlet), 3.16 (remove and

[6]In keeping with the lack of precision shown by both parties in this matter, the sum of the amounts specified in Exhibit A is something other than the dollar figure said to be their total -- $40,129.76, not $40,192.28.

[7]And if GSA counsel had authority to enter into such a contract -- an issue we need not investigate here.

discard lay-in fluorescent light fixtures), 3.21 (remove and discard exit light fixture), and 58.01 (install 5/8" gypsum wallboard no more than ten feet high and finished on one side). The total base price of this work was $2,215.13. Subtracting the contractually-required fifteen-percent discount, the value of the work was $1,882.86. Transcript at 53; Appellant's Exhibit 19 at 2; Appellant's Exhibit 20. GSA did not present any evidence on this portion of the claim and does not contest the portion. We grant the amount sought.

McTeague also maintains that it should have been paid for drywall installation at the rate prescribed in line item 59.02, rather than the rate prescribed in line item 58.02. As we have discussed with regard to delivery order -0030, GSA did not make a general promise to substitute drywall line item rates on all delivery orders. Further, work was performed under delivery order -0059 from February 10 to April 6, 1997, prior to the date of the rate substitution agreement which was made, thus making the agreement inapplicable to this job even under the contractor's theory that it applied to all pending projects. See Transcript at 154.

3. Non-line item work

a. GSA directed McTeague to install on this project solid core, stain-grade wood doors measuring three feet wide by seven feet ten inches high. Transcript at 51. The contract does not contain a line item for this size door. GSA included in the delivery order line items for the installation of similar doors measuring three feet wide by nine feet high. Appeal File, Exhibit 10.6. The agency building manager responsible for the job, Daniel Weitzel, acknowledges that the doors GSA ordered are not a standard size. Transcript at 415.

Because the contract does not contain a line item for doors of this unusual size, the contract provides that a price for installation should be either negotiated between the parties or determined through the disputes process. The actual cost of the doors was $2,973.06 (with McTeague's markup, $3,567.66[8]). Transcript at 51-52, 60-61; Appellant's Exhibits 23-24. GSA does not contest the reasonableness of this amount. McTeague should be paid this sum, less the amount it was paid for door installation, which the contractor identifies as four separate line items totaling $3,263.83 (base price of $3,839.80 less fifteen percent). See Appellant's Brief at 15-16. The net due is $303.83.

b. According to Mr. McTeague, GSA also required McTeague to install door closing devices bearing a specific brand (Yale) rather than standard door closing devices. Transcript at 52. The contract does not contain a line item for any particular brand; GSA included in the delivery order a line item for the installation of standard devices. Appeal File, Exhibit 10.6; Transcript at 62-63. Thus, as for the door order, above, McTeague believes that it should be compensated for its actual cost of the door closing devices it purchased (plus markup), less the amount it was paid for standard door closing devices.

[8]McTeague's claim as to the doors includes two twenty-percent markups. Compare unit prices in Appellant's Exhibit 19 at 3 with unit prices in Appellant's Exhibit 23. The figures we cite here include just one such markup.

Mr. Weitzel testified that GSA did not order brand-name door closers; it simply ordered under a contract line item for closers (48.05). Transcript at 409. "We don't specify manufacturers," he stated. "We specify equal or equivalent." Id. at 410.

We understand Mr. Weitzel's testimony to correct Mr. McTeague's version of what transpired in that if GSA ordered Yale door closing devices, it would have accepted devices equivalent to those made by Yale. Mr. Weitzel's statement does not controvert Mr. McTeague's statement that the agency designated a specific brand, and no particular brand (or equivalent) is shown for the line item in question. See Appeal File, Exhibit 1 at 319, 362. Thus, we accept McTeague's position that GSA specified something more than was required in a line item for door closers. There is no dispute as to the reasonableness of the price McTeague paid for the devices it purchased; GSA does not maintain that if the contractor had bought a brand equivalent to Yale, it would have paid less. We award to McTeague the amount claimed for door closing devices -- $669.06 (including standard markup), less the price GSA paid for such devices under line item 48.05 ($98.67, taking into account the fifteen percent discount from the line item price). The net amount is $570.39.

c. GSA directed McTeague to supply and install a Lexan pass-through sheet on this project. The cost of the material, and the labor to install it, was $890.29. Transcript at 57-58, 65-66; Appellant's Exhibits 27, 28. The contracting officer declined to pay for this work because the delivery order includes a line item for 1/4-inch thick clear tempered glass (line item 50.04). Appeal File, Exhibit 10 at 4. Lexan is a polycarbonate resin -- a kind of plastic -- rather than glass. 8 Sweet's General Building & Renovation Catalog File 08840 (2000); Caleb Hornbostel, Construction Materials: Types, Uses and Applications 666-74 (2d ed. 1991). The line item for glass therefore does not apply to this work. The agency should compensate the contractor for the Lexan as a non-line item. There is no reason to believe that the amount claimed, $1,068.35 (cost plus markup) is unreasonable, or that the Lexan installed was a substitute for the glass panel shown on the delivery order. We therefore direct GSA to pay McTeague the amount claimed for the Lexan sheet.

d. The contract required McTeague to "[r]emove debris, rubbish and other materials resulting from demolition from the site as soon as practicable." It also stated, "Do not allow [such materials] to accumulate in the building or on the site." Appeal File, Exhibit 1 at 87. Mr. McTeague and Mr. Weitzel agree that GSA did not allow McTeague to keep a dumpster on site for this project. Transcript at 54, 414. Beyond this point, however, their testimony differs. According to Mr. Weitzel, the agency gave the contractor the choice of removing trash on a daily basis or accumulating it and then removing it all at once. The contractor was not entitled to extra compensation if it chose the second alternative, this witness believed. Id. at 404-05. According to Mr. McTeague, the limitation on use of a dumpster required the contractor to bring in personnel specially to remove trash on a Saturday, at overtime rates, and pay a premium to have a dumpster on site only at a specific, limited time on that day. McTeague believes that it should be paid $1,282.80 plus markup for the costs imposed by the agency's directive. Id. at 54-56.

We need not decide whether McTeague is entitled to be paid an additional sum for trash removal or not, for even if payment is appropriate, the contractor has not given us sufficient information to fix an amount of damages which is more than mere speculation. Although Mr. McTeague described the costs incurred as overtime labor and premium

dumpster expenses, the claim itself includes neither. The only item claimed is forty-five labor hours at the firm's standard billing rate of $28.50 per hour. Appellant's Exhibit 19 at 3; Transcript at 129-30. The support for this amount is apparently a time sheet which notes trash removal as one of two activities occurring on a particular date; trash removal is not shown as an activity on any other day for which time sheets have been provided. Appellant's Exhibit 21. We have no idea which of the forty-five hours on the day in question was devoted to trash removal. Further, the day was February 19, 1997 -- at the beginning of the job, not the end, as the contractor contends. See id. at 1.

e. According to Mr. McTeague, GSA directed his firm to install drywall in a narrow area in an alcove where two beams come together. Mr. McTeague says that he knew that performing this work would be very time-consuming (and therefore expensive), so he agreed to do it only if GSA would pay for the work on an hourly basis. He testified that the amount of the claim for this work, $1,368 (forty-eight hours at $28.50 per hour) plus markup, reflects his firm's actual cost. Transcript at 58-59. When the contracting officer reviewed this claim element, she concluded, "[T]his increase in cost was not approved, nor was any proposal received to this effect. GSA requested that McTeague provide additional information regarding this item." Appeal File, Exhibit 10 at 4. Notwithstanding this caution, the contractor has not provided any relevant information to the Board other than the brief testimony of Mr. McTeague. The only portion of our record which might support this element is McTeague's time sheets. Either "alcoves" or "drywall" is mentioned on just three days' time sheets. One of these is clearly not relevant to this element, since it notes that drywall and alcoves were to be painted on that day. Appellant's Exhibit 21 at 7. A second day's time sheet includes the notation "Touchup Drywall," but does not say where that drywall is located or whether the touch-up was of paint or joint compound. Id. at 8. The third day's sheet says, "Finish coat on Alcoves," but does not indicate whether the coat is of paint or joint compound. Id. at 3. As with trash removal, this evidence is insufficient to allow us to find an amount of damages which is more than mere speculation.

f. Mr. Weitzel required McTeague to perform its painting work on evenings and weekends, so that tenants in the building would not have to contend with paint fumes. Transcript at 56-57, 405. McTeague seeks to be reimbursed for the costs it actually incurred as a result of painting during other than normal working hours. Appellant's Brief at 17; Appellant's Exhibit 19 at 3. GSA believes that the contractor should be compensated at the rate provided in the contract for performing this work on off-hours. Respondent's Reply Brief at 10-11. The agency's position is correct. The delivery order included a requirement for putting two coats of paint on 213 square meters of drywall, at a base price of $549.54. Appeal File, Exhibit 10.6 at 2. During option year 2, when this delivery order was performed, the contractually-mandated discount rate was fifteen percent for work during regular working hours and ten for work at other times. Id., Exhibit 1 at 3. Thus, the appropriate compensation for this painting this drywall would have been $467.11 if the work had been done during regular hours and should have been $494.59 because it was done at other times. McTeague is entitled to the difference, $27.48.

g. The claim also includes amounts for labor and materials devoted to patching floors. Appellant's Exhibit 19 at 3. McTeague has included in the record time sheets with notations of floor patching and an invoice for floor patching materials, and Mr. McTeague has identified these documents as supporting his firm's claim. Appellant's Exhibit 21 at 8;

Appellant's Exhibit 22; Transcript at 60. As with other items, however, the number of hours devoted to the task at issue is not apparent, since the time sheets note that several tasks were performed on the days in question. See Appellant's Exhibit 21 at 8. We also note that the delivery order required McTeague to install thirty-seven square meters of solid vinyl composition tile (line item 74.02), and the contract says that installation of such tile includes surface preparation. Appeal File, Exhibits 1 at 364, 10.6 at 3. Might the labor and materials have been necessary to complete this line item work? The contractor has failed to meet its burden of showing that floor patching work should be compensated separately. We consequently deny this element of the claim.

h. McTeague also asks that the Board direct GSA to pay $1,600 plus markup for renovations to air conditioning ducts. According to Mr. McTeague, Blazer Air Conditioning Corp. performed this work and charged McTeague this amount for it. Transcript at 58, 66. The record contains an invoice from Blazer to McTeague, dated March 28, 1997, in the amount of $1,600, for "Renovations to Air conditioning ducts for the Office of the Inspector General at the Fort Lauderdale Federal Building and Courthouse" on March 18. Appellant's Exhibit 30. Mr. Weitzel testified, however, that GSA hired Blazer directly to perform work on the air conditioning system at this building, and that the agency did not ask McTeague to do any work on that system. Transcript at 407-09. The record contains an invoice from Blazer to GSA, dated March 24, 1997, in the amount of $1,900, for "Repair of two (2) existing Vav [variable air volume] boxes; Repair associated ductwork; Supply and install two new thermostats; and Supply and install associated pneumatic lines" at the Fort Lauderdale Building on March 18. GSA paid this invoice. Appeal File, Exhibit 10.13.

As McTeague notes, the two Blazer invoices are to different parties, are for different amounts, were written on different dates, and describe different work. Appellant's Brief at 18. We can give credence to all the testimony on this matter by concluding that Blazer performed a good deal of work at the Fort Lauderdale Building on March 18, repairing the system for GSA and renovating the ductwork for McTeague. The fact that GSA paid Blazer for the former does not mean that it should not pay McTeague for the latter. We grant to McTeague the amount claimed for the ductwork renovations, $1,920 including the contractor's markup.

i. GSA also directed McTeague to install a fire alarm pull station. Imperial Electric performed this work and charged McTeague $740 for it. Transcript at 58; Appellant's Exhibit 29. GSA has already paid McTeague for this item under the delivery order. Appeal File, Exhibit 10.6 at 3.

In summary, we grant $5,772.91 of the $16,128.50 claimed for delivery order -0059.

Delivery order number P-04-97-RS-0058

McTeague claims that it is entitled to be paid an additional $8,845.05 for work performed at the Food and Drug Administration's Cargo Clearance Center in Miami, but not listed on the delivery order. Appellant's Brief at 20; Transcript at 67. The claim for work on this project was originally $24,241.69. Appeal File, Exhibit 7 at 2. The contracting officer paid $15,396.43 of this amount. Id., Exhibit 10 at 5.

The original delivery order for this project, dated February 28, 1997, was in the amount of $45,494.99. Appellant's Exhibit 38; Appeal File, Exhibit 10.16a. GSA added considerable work to the project as it went along. By September 29, 1997, when the third modification to the order was issued, the total amount was $124,076.43. Appeal File, Exhibit 10.16c. Through the contracting officer's decision, GSA paid McTeague for all the work included on the amended delivery order, less $3,680 which the contractor billed for installation of conduit that the agency believed had not actually been installed. Id., Exhibit 10 at 5.

McTeague presented at hearing, through the testimony of Mr. McTeague and Imperial Electrical vice-president Michael Terango, evidence that Imperial Electrical, as subcontractor to McTeague, performed line item work on this project, with a base price of $15,413.07, which was not included in the final delivery order. Transcript at 71-73; Appellant's Exhibits 35-37; Appeal File, Exhibit 10.16c. GSA did not conduct a walk-through of this job after completion -- either jointly with McTeague or on its own. Transcript at 76-78. Thus, GSA has no way of knowing how much work McTeague actually performed on the project.

The agency's Joe Jones questioned whether Imperial Electrical could have actually done the work said to be associated with one line item, 154.04. Transcript at 316-17. This line item pertains to the supply and installation of fluorescent light fixtures measuring one foot by four feet. Appeal File, Exhibit 1 at 342, 371. According to Mr. Jones, the Cargo Center does not contain any such fixtures. Transcript at 317. The base price of the work which Imperial Electrical says it performed on this job under this line item is $3,973.84.

We find, based on the testimony of Messrs. McTeague and Terango, that McTeague (through Imperial Electrical) actually performed substantial line item work on this project which was not included in the delivery order. The base price of the work, other than the item Mr. Jones challenged, is $11,439.23. With the contractually-mandated fifteen percent discount, the value of this work is $9,723.35. We need not decide whether Mr. Jones is correct in maintaining that the light fixtures were not installed because even if he is, the value of the work performed is greater than the amount of the contractor's claim for this project. We award the entire amount of the claim, $8,845.05.

Delivery order number P-04-97-RS-0044

McTeague claims that it is entitled to be paid an additional $8,910.28 for work performed at the Social Security Administration office on N.W. Second Avenue in Miami.

1. Balance due

McTeague and GSA agree that the total amount of the delivery order for this job was $22,024.48, and that McTeague was paid only $16,518.36 for its work, leaving a balance due of $5,506.12. Appellant's Exhibit 42; Respondent's Brief at 12; Appeal File, Exhibit 10 at 6. The contracting officer did not pay the balance because she believed that the efforts of the electrical subcontractors engaged by McTeague to perform electrical work and install local area network (LAN) cabling were so deficient that GSA had to hire another contractor,

and pay that firm more than the balance due McTeague, to repair the work. Appeal File, Exhibit 10 at 6-7.

The record contains invoices from Vernon Electric Corp. to GSA for work performed at the relevant location in March and April of 1998. The amounts on these invoices total $8,611.60 -- $5,876.60 for work on the LAN cabling, $2,055 for miscellaneous work including electrical aspects of systems furniture installation, and $680 for checking electrical circuits. GSA made payment to Vernon Electric in these amounts. Appeal File, Exhibits 10.22, 10.23, 10.24. No witness offered any testimony about these invoices or the work performed by Vernon Electric.

The only witnesses who testified about the work performed by McTeague and its subcontractors on this project were Messrs. McTeague and Terango. Mr. McTeague had no personal knowledge about the work. Transcript at 81-82. Mr. Terango testified that his firm performed electrical work on the project, but did no work on the LAN cabling other than identifying, at GSA's request, cables which had been installed by others at an earlier date. Id. at 183-86. Mr. Terango also testified that an August 1997 inspection of the electrical and LAN cabling work at the site, at which he was present, revealed that only a few aspects of the electrical work were flawed; that his firm was able to correct those aspects quickly with minimal effort; and that no one from GSA ever complained about the work his firm performed. Id. at 186-93; see also Respondent's Supplemental Appeal File, Exhibit 3.

Based on Mr. Terango's testimony -- the only evidence in the record on the matters it addresses[9] -- we find that McTeague was not responsible for the LAN cabling at this office, and that the contracting officer's determination to deduct, from the balance owed that firm, amounts paid for repair of the cabling was unjustified. We also find no evidence to support the contracting officer's assertion that the work performed on the electrical system in the spring of 1998 was necessary to correct errors made by a McTeague subcontractor during the previous summer. There is no reason to believe that the subcontractor's work (after inspection-detected problems were corrected) was in error; much time passed between the time that work was completed and the time that Vernon Electric came to the site; and according to Vernon's invoices, none of the work Vernon did corrected any electrical work that had been performed earlier. We consequently conclude that McTeague should be paid the entire balance due of $5,506.12 on delivery order -0044.

2. Additional work

McTeague also contends that it should be paid $2,412 for extra work ordered by GSA inspectors that was performed by Imperial Electrical and $1,262.16 for extra work ordered by GSA building management specialist Joe Jones that was performed by another subcontractor, M & N Electric, Inc. Appellant's Brief at 23-24; Appellant's Exhibit 42 at 2. Proving that the work encompassed by this portion of the claim was not included in the delivery order would require, at a minimum, demonstrating which elements of work which were included in the order. Unfortunately, neither party has seen fit to place the order in the

[9]Like the contractor's claims, the contracting officer's decision is not evidence as to factual matters in dispute.

record. Thus, even if we were to accept Mr. McTeague's testimony that he paid Imperial and M & N for certain work they performed on this job, we could not tell whether that work was additional to what GSA ordered and paid for or not. Thus, we must deny recovery of these amounts.

McTeague is entitled to $5,506.12 more than it has received for work performed on delivery order -0044.

Delivery order number P-04-97-RS-0010

McTeague claims that it is entitled to be paid an additional $1,539.98 for work performed at the Department of Agriculture Office of Inspector General's office in Fort Lauderdale. Originally, the contractor demanded $1,926.44 for work at this site. Appeal File, Exhibit 7 at 2. The contracting officer agreed to pay, and did pay, $386.46 on this claim. Id., Exhibit 10 at 6, Exhibit 10.19b. McTeague then reduced its claim by that amount. Appellant's Brief at 25.

The only issue here is how much McTeague should be paid for providing and installing three solid core, stain grade, wood doors and associated door frames. Mr. McTeague and Mr. Weitzel agree that these doors were not a standard size and that no line item describes them. Transcript at 83, 396, 415. The contracting officer picked a line item for doors and door frames of similar qualities but different sizes and compensated the contractor at the contract prices for those line items. Appeal File, Exhibit 10 at 5-6.

As we have discussed with respect to delivery order -0059, this determination was improper because the doors and frames installed on the job are different from the ones described in the line items. Under the contract, the agency should have negotiated a price for the non-standard doors with the contractor before installation occurred.[10] Because a price was not negotiated, we will have to determine one now.

The actual cost to McTeague of providing and installing the three non-standard doors and door frames, and the amount included in the contractor's invoice for this work, was $1,680. Transcript at 83; Appellant's Exhibit 47. GSA has already paid McTeague $1,088.10 for the doors and frames. Appeal File, Exhibit 10 at 6. We direct the agency to pay the contractor the difference between these two figures, which is $591.90.

[10]Mr. Weitzel and the contracting officer both assert that McTeague accepted compensation for the same non-standard size doors at line item prices under other delivery orders, and maintain that the contractor should consequently be held to this price on all delivery orders. Transcript at 396-97; Appeal File, Exhibit 10 at 5. Just as we held that acceptance of substitute rates for drywall pricing on one delivery order does not commit GSA to pay those rates for drywall on all delivery orders, we reject the position that the contractor's acceptance of a substitute price for certain non-standard doors on one delivery order commits it to accept that price for the same doors on all delivery orders. Non-line item prices must be negotiated, under the contract, on each occasion that non-line item work is ordered.

McTeague does not explain why it should be awarded the remainder of the amount claimed for delivery order -0010. The total award is therefore limited to the additional amount for the doors and frames, $591.90.

Delivery order number P-04-97-RS-0096

McTeague claims that it is entitled to be paid an additional $3,660.70 for work performed on the LAN at the Social Security Administration office in Hialeah.

GSA paid McTeague the full amount specified in the delivery order for work on this project. Appeal File, Exhibits 10.18, 10.18a; Transcript at 333-34. McTeague asserts that its subcontractor M & N Electric performed work additional to that contained in the delivery order, and that it has not been paid for that work. In support of the claim, Mr. McTeague testified that M & N performed the work and that the work was not specified in the order. He also identified an invoice in the record in the amount of $325.16 from M & N to McTeague for additional work. Transcript at 85-88; Appellant's Exhibit 50.

The only other evidence which relates to this claim is testimony of GSA's Mr. Jones. Mr. Jones testified to a matter which is not in dispute -- that GSA paid McTeague the full amount specified in the delivery order. Transcript at 329-34. He also stated that the work listed in an agency receiving report, which shows a total amount equal to that on the delivery order, represents all the work GSA determined was performed on this project. Id. at 333; see Appeal File, Exhibit 10.18; Respondent's Supplemental Appeal File, Exhibit 4 at 21-22.

On balance, the evidence supports McTeague's position as to entitlement. We find that M & N performed work on this job which is not listed in the delivery order -- first, because the delivery order does not appear to include any of the work described in the invoice, and second, because Mr. Jones's testimony that the order includes all the work performed is pure hearsay, the source of which has not been suggested. The documentation of costs is insufficient to support an award of the entire amount of the claim, however. The only documentation of costs is the invoice in the amount of $325.16. The only other exhibit in the record which contains any other number is an undated, typed statement, not on letterhead, which shows charges of $1,062.50 for electricians' time associated with testing. Appellant's Exhibit 54. The record does not contain any more detailed information as to the purpose of this charge, and we note that the delivery order included a line item for testing, so even if M & N charged McTeague $1,062.50 for testing time, we cannot tell whether the charge was for an item in the order or for extra work. See Respondent's Supplemental Appeal File, Exhibit 4 at 22.

We award a total of $390.19 (M & N's charge of $325.16 plus McTeague's markup) on delivery order -0096.

Delivery order number P-04-97-RS-0024

McTeague claims that it is entitled to be paid an additional $19,475.01 for work performed at the Department of Health and Human Services Office of Inspector General on the fifth floor of the Claude Pepper Federal Building in Miami.

1. Line items

McTeague claims that it should be paid additional amounts for performing additional work under two line items, 59.02 (supply and install two-hour rated drywall) and 3.16 (remove and discard light fixtures).

a. Under the first line item, the contractor maintains that it should be compensated at a higher rate, and for greater quantities, than shown in the delivery order. We reject the contention that a higher rate should apply, for reasons already explained under the heading of delivery order -0030: The rate substitution agreement pertained only to delivery order -0106, and even if it could be deemed to apply to orders being performed at the same time as that order, -0024 was performed earlier than -0106, so the agreement could not be considered to apply to -0024. See Respondent's Exhibit 2 at 1, 6, 11, 14-24; Respondent's Supplemental Appeal File, Exhibit 6 at 12-14 (-0024 start date was December 12, 1996, and latest date of work on project was February 27, 1997; -0106 order date was July 28, 1997). McTeague has demonstrated, however, that the quantity of drywall provided and installed on this job was 155 square meters, rather than the eighty-three included in the delivery order. Transcript at 89-90; Appellant's Exhibit 57; Respondent's Exhibit 2 at 3, 8. The contractor should be paid for this extra work at the price set by the contract for the appropriate line item, 58.02: a base price of $39.27 per square meter, less eighteen percent. See Appeal File, Exhibit 1 at 3, 321. The total amount for the additional seventy-two square meters is $2,318.50.

b. The second line item, like some of those in delivery order -0030, is subject to a conflict between unsupported walk-through counts. GSA has supplied for the record an inspection report which does not include an entry for line item 3.16. Respondent's Exhibit 2 at 25-27. McTeague has supplied an invoice from subcontractor Imperial Electrical which shows an entry of twelve under line item 3.16. Appellant's Exhibit 58. Neither party presented testimony from either of the individuals who allegedly made the walk-through counts. Faced with an equipoise of documentation of uncertain value, we deny the claim element because the appellant has not met its burden of proof.

2. Non-line items

a. McTeague claims $2,280 (plus markup) for moving furniture and $2,052 (plus markup) for patching floors. The delivery order, as amended, includes payments for each of these efforts -- $250 for moving furniture and $550 for patching floors. Respondent's Exhibit 2 at 4, 9. These prices were not determined by negotiation between McTeague and GSA. See Transcript at 90-91, 283 (testimony by Mr. McTeague that GSA agreed to pay for work by the hour; testimony by Mr. Jones that he did not know how these prices were determined). The question effectively posed to us is whether larger amounts than those specified in the order should be paid to the contractor.

McTeague's position is based on statements by Mr. McTeague that eighty man-hours of work were required to move the furniture and seventy-two man-hours were required to patch the floors. Transcript at 90-92. The contractor has placed into evidence its daily time records for this job, and it maintains that these records support its president's statements. The time records, however, are not helpful in this regard. They show that McTeague

employees moved furniture (but did not patch floors) on two days, and that those employees worked a total of 82.5 hours on those days. On each day, however, the employees also performed other tasks -- installing carpet, painting, and removing debris. The time records also show that McTeague employees patched floors (but did not move furniture) on five days, and that those employees worked a total of 194 hours on those days. On each of these days, the employees also performed other tasks -- locating, moving, and installing carpet; painting; relocating Government material; sweeping; cleaning up; and removing debris. On one of the days (twenty-six hours), the employees moved furniture, prepared floors, and painted. Appellant's Exhibit 59. On one of the days (twenty-nine hours), the employees both moved furniture and patched floors, and they performed no other tasks.

Out of this melange of information, we can be confident of the amount of time McTeague employees spent in moving furniture and patching floors only on the last of the described days. On every other day on which one or both of these tasks were performed, the employees also spent time doing other things, so we cannot tell whether they spent one percent, ninety-nine percent, or some other part of their time on the tasks in question. McTeague asserts that its burdened labor rate was $28.50 per hour. Appellant's Exhibit 55; see also Transcript at 133. GSA does not challenge this rate, so we will use it. Twenty-nine hours at $28.50 per hour yields a product of $826.50. Adding McTeague's standard markup, we conclude that the contractor has documented that the value of work it performed in moving furniture and patching floors is $991.80 -- $111.80 more than GSA paid for this work. We do not award more than this, for to do so would require wild, unsubstantiated guesses at the amounts of time McTeague devoted to the two tasks on the days in question. The Court of Appeals for the Federal Circuit has made clear that a tribunal may not employ the "jury verdict method" for calculating damages unless it has determined "that the evidence is sufficient for a court to make a fair and reasonable approximation of the damages." Dawco Construction, Inc. v. United States, 930 F.2d 872, 880 (Fed. Cir. 1991), rev'd on other grounds, Reflectone, Inc. v. Dalton, 60 F.3d 1572 (Fed. Cir. 1995) (in banc); see also Clark Concrete Contractors, Inc. v. General Services Administration, GSBCA 14340, 99-1 BCA ¶ 30,280, at 149,751. We cannot make that determination here.

b. McTeague asks to be paid $228 (plus markup) for devoting eight man-hours to skimming walls. According to Mr. McTeague, this time was required to repair big holes and gouges in some of the walls on this project. Transcript at 91-92. GSA notes that the delivery order includes line items 15.01(prepare existing drywall for recoating) and 94.01 (paint two coats on drywall). Respondent's Exhibit 2 at 3, 8. The latter line item includes "preparation of surfaces for coating," which encompasses "substrate cosmetic repairs, existing coating preparations, and treatments such as filling in nail holes [and] minor cracks." Appeal File, Exhibit 1 at 365; see also id. at 210, 221 (defining "cosmetic substrate repairs"). According to GSA, work under these line items includes whatever skimming of walls McTeague did on the project.

We need not decide whether some of the walls required repair greater than that which was included in line items 15.01 and 94.01, for even if we were to agree with McTeague on this question, there is no evidence in the record which might serve as the basis for a calculation of damages. McTeague's daily time records do not contain any reference to wall skimming. See Appellant's Exhibit 59.

c. McTeague claims $5,127.53 (plus markup) for overtime devoted to the job by its carpenters and superintendent. Mr. McTeague testified that Mr. Jones told him that GSA wanted this project done quickly and that the agency would pay for overtime work. Mr. McTeague said that he had notes on the subject, but those notes are not a part of the record. Transcript at 92. Mr. Jones testified to the contrary that the work under this delivery order was not a high-profile job, and that to his knowledge, GSA ordered no overtime on it. Id. at 284-87.

McTeague has not carried its burden of proof on this element of the claim. It has given us no reason to believe its witness rather than the agency's. One would expect that if GSA had really directed McTeague to expend such a significant amount of resources, the contractor would have memorialized it. If McTeague did so, the relevant document is not in evidence. Further, the only documentation as to overtime McTeague's carpenters and superintendent worked on this project is contained in the contractor's certified payrolls, which GSA put in the record. These payrolls show only thirty-three hours of overtime worked by carpenters (not ninety-six, as claimed) and fourteen hours of overtime worked by the superintendent (not nineteen, as claimed). Respondent's Exhibit 2 at 14-24. Thus, the contractor has not only failed to convince us that it worked overtime at GSA's direction, but also has failed to convince us that its claim on this matter is in a credible amount.

3. Additional amount

McTeague's claim contains an additional sum of $2,606.27, which appears to be the difference between (a) the total of the amount specified on the delivery order (as amended) plus the amounts sought under the line items and non-line items discussed above and (b) payments made to the contractor by the agency on this delivery order. See Appellant's Exhibit 55. Whatever this sum may represent, McTeague did not present any evidence regarding it or discuss it in its brief. We therefore have no basis on which to award any of the sum.

In summary, the total amount awarded to McTeague for work under delivery order -0024 is $2,430.30.

Delivery order number P-04-96-RS-0069

McTeague claims that it is entitled to be paid an additional $3,533.51 for work performed at the Paul G. Rogers Federal Building in West Palm Beach. This figure is equal to the entire amount of the delivery order, plus two items valued at $42.08 which were not included in the order and whose relationship to the order has not been explained to us, and a $1.64 arithmetic error.

McTeague performed all of the work required by the order. GSA did not pay for any of the work, however, because its inspector believed that some of the work was deficient. Transcript at 393-95; Appeal File, Exhibits 10.27, 10.27a. Mr. McTeague and the contracting officer met to discuss the agency's concerns. At this meeting, the contracting officer stated that if McTeague would correct the problems noted by the inspector, GSA would make payment. Transcript at 95-96. According to Mr. McTeague, he made arrangements on three occasions with Mr. Weitzel, the building manager, for access to the

secure space where the work was done, so corrections could be made. McTeague personnel appeared at the site at each of the three appointed times, prepared to perform necessary work, but they were denied access. Id. Mr. Weitzel was a witness at our hearing, but he did not testify as to these statements by Mr. McTeague. Consequently, we accept the statements.

GSA defends its failure to pay for work performed by pointing to three contract provisions. Respondent's Reply Brief at 12. The first, "Warranty of Construction," says that the contractor warrants that its work is free of defects and that it will remedy any defect at its own expense. Appeal File, Exhibit 1 at 30. The second, "Non-Compliance with Contract Requirements," says that if the contractor, after having received written notice of non-compliance with any contract requirement, fails to initiate compliance promptly and complete it within a reasonable time, the contracting officer may order the contractor to stop work. Id. at 42. The third, "Payments Under Fixed-Price Construction Contracts," says that the Government will pay the contractor the amount due under the contract after completion and acceptance of all work. Id. at 40.

We agree with GSA that at least the last of these provisions allows the agency to withhold payment until work is complete and accepted. We do not agree, however, that application of this provision to this project was appropriate. The reason that the work was never completed was not that the contractor refused to take corrective action, but rather that due to the agency's actions, the contractor was precluded from doing what was necessary to fix identified defects. "The government must avoid actions that unreasonably cause delay or hindrance to contract performance." C. Sanchez & Son, Inc. v. United States, 6 F.3d 1539, 1542 (Fed. Cir. 1993); see also Raytheon Service Co., GSBCA 5695, 81-1 BCA ¶ 15,002. When an agency prevents a contractor from completing its work, it discharges the contractor from its duties under the contract. Malone v. United States, 849 F.2d 1441, 1445-46 (Fed. Cir. 1988); Apex International Management Services Inc., ASBCA 38087, et al., 94-2 BCA ¶ 26,842, at 133,548-49; see also Shear v. National Rifle Association of America, 606 F.2d 1251, 1255-57 (D.C. Cir. 1979) (discussing treatises' treatment of general applicable principle). We consider that the GSA's repeated failure to allow McTeague access to the site, for the purpose of curing deficiencies, excused the contractor from correcting whatever errors were present in the work performed. Because McTeague has done everything it must have done, under the contract, to receive full payment on delivery order -0069, GSA must make payment to McTeague in that amount, $3,489.79.

Delivery order number P-04-97-RS-0092

McTeague claims that it is entitled to be paid an additional $6,473.40 for work performed at the United States Coast Guard's ninth floor conference room (and apparently also on the eighth floor) in Miami's Brickel Plaza.

All elements of this claim involve line items.

a. McTeague asks to be compensated for providing and installing drywall at the rate prescribed by the contract for line item 59.02, rather than the rate prescribed for line item 58.02. We deny this element of the claim for the reasons enunciated earlier. Notwithstanding the fact that this job was being performed at about the same time as the job done under delivery order -0106, there is no evidence that the agreement for substitution of

drywall line items on that order applied to this one. See Appeal File, Exhibit 10.28a; Respondent's Supplemental Appeal File, Exhibits 5 at 1-3, 6 at 12-14 (-0106 order date was July 28, 1997; -0092 completion date was August 10, 1997).

b. Mr. McTeague counted the numbers of doors his firm painted and determined that some doors were painted on both sides though the firm was paid for painting them on only one side, and that other doors were painted but not included in the delivery order's counts. Transcript at 98. Because the record does not contain any other evidence of the numbers and sides of doors painted, we accept Mr. McTeague's testimony on this matter. McTeague should be paid for the additional painting, as follows, with the base price shown for each line item: line item 88.01, $54.67; line item 88.03, $41.64; line item 92.01, $55.16; line item 92.02, $28.10; line item 92.03, $52.08 (the claim includes an arithmetic error for this item); line item 96.01, $88.55. Id.; Appellant's Exhibit 64; Appeal File, Exhibit 1 at 327-29. The total amount is $320.20. With the contractually-mandated fifteen percent discount, the net amount is $272.17. See Appeal File, Exhibit 1 at 3.

We deny the claim as to line item 88.02. Mr. McTeague's count for this line item was eight. Transcript at 98; Appellant's Exhibit 64. The original delivery order shows six, and amendment PC-01 to the order adds two. Appeal File, Exhibits 10.28 at 2, 10.28a at 2; Respondent's Supplemental Appeal File, Exhibit 5 at 2, 6. Thus, the delivery order as amended includes all the doors counted by Mr. McTeague. Similarly, Mr. McTeague's count of linear meters of premolded vinyl base trim removed and discarded (241) is the same as the total of the original order (163) and the amendment (seventy-eight), so the claim for additional payment for line item 1.28 is denied. Additionally, his count of square meters of wall area from which wallcovering was removed and discarded (652.92), Appellant's Brief at 36, is actually smaller than the total stated on the original order (462) and the amendment (236.8), so the claim for more money under line item 1.28 is denied.

c. The remainder of the claim for additional payment under this delivery order is premised on the theory that the wall area on which the contractor repaired existing plaster (line item 14.03), primed the surface (line item 87.01), and installed wallcovering (line item 76.05) was greater than the area specified in the delivery order. The area specified for each of these tasks was 462 square meters in the original order. Appeal File, Exhibit 10.28 at 2; Respondent's Supplemental Appeal File, Exhibit 5 at 6. Two hundred thirty-six and eight-tenths square meters were added by amendment PC-01, for a total of 698.8. Appeal File, Exhibit 10.28a at 2; Respondent's Supplemental Appeal File, Exhibit 5 at 2. Mr. McTeague testified that he calculated 828 square meters, based on invoices he received from his wallcovering supplier. Transcript at 97-98; Appellant's Exhibits 65-68.

Unfortunately for the contractor, its president has misunderstood the invoices. Two invoices show wallcovering purchased for this job -- Appellant's Exhibits 65 (two entries, one for 223 yards and one for 139) and 68 (160 yards). The third "invoice" on which Mr. McTeague bases his calculations, Appellant's Exhibit 66, is actually a credit memo, showing that McTeague has received a credit against its first order. The credit is for a reduction in the price for 117 yards and a refund for twenty-two yards which were returned to the supplier. Mr. McTeague's calculations are based on the incorrect belief that these last two amounts of wallcovering should be added to the other three to find a total. Actually, the credit for 117 yards has no impact on the total used, and the twenty-two yards returned

should be deducted from the amount purchased. The total number of yards of wallcovering used on the job, applying the invoice figures correctly, is five hundred, not 661. Accepting McTeague's uncontested assertion that the wallcovering was four and one-half feet wide, Appellant's Exhibit 67, the total area of the wallcovering purchased for this job was 627.3 square meters, not 829.32. Because the area of wallcovering purchased was less than the area for which GSA has made payment, McTeague's theory cannot serve as the basis for increased payments under this delivery order.

The total amount awarded to McTeague on its claim under delivery order -0092 is $272.17.

Delivery order number P-04-98-RS-0016

McTeague claims that it is entitled to be paid an additional $13,552.21 for work performed at the Department of Housing and Urban Development's offices on the fourth floor of Brickel Plaza.

All of the work for which McTeague seeks additional payment, as listed in the contractor's brief, is non-line item work. Appellant's Brief at 37-38.

a. The first item is repair and clean up of existing wiring in eight electrical boxes. Appellant's Exhibit 70. This work was included in an invoice from M & N Electric to McTeague dated January 30, 1998. Appellant's Exhibit 73; Transcript at 100. The total amount of the M & N invoice was added to the delivery order in amendment PC-01 on March 27, 1998, as a non-line item amount. Compare Appeal File, Exhibit 10.32 with id., Exhibit 10.33. McTeague does not allege that GSA has failed to pay the total amount stated in PC-01. Thus, we conclude that the agency has already paid the contractor for this work.

b. The remainder of the claim consists of labor costs for skim-coating walls (307 man-hours), excessive framing (27.5 man-hours), and cutting in new doors (eight man-hours). Appellant's Exhibit 70. In support of this part of the claim, McTeague points to daily time records which show that contractor employees performed these three varieties of work, as well as others, while working 374 hours on twelve specified days. Appellant's Exhibit 72; Transcript at 100-02.

The delivery order called for McTeague to furnish and install seventy-one square meters of drywall, install seven Government-furnished doors and door frames, and paint 469 square meters of drywall, as line item work. Appeal File, Exhibit 10.33 at 2. In performing this line item work, the contractor, to comply with contract requirements, would have had to skim-coat some walls and frame some doors. Id., Exhibit 1 at 123-24, 180-81, 365 (as to painting requirements, see more detailed discussion under delivery order -0024). However much time McTeague devoted to skim-coating walls and framing doors as part of the line item work must be deducted from the total time devoted to these activities to determine the amount of time McTeague spent on "excessive" (or non-line item) skim-coating and framing. McTeague has not suggested a division of the time between line item and other work, however, or even a methodology for making such a division. Thus, even if the contractor could prove that this job demanded the expenditure of time greater than should have been required to perform the line item work -- and this has not been proved --

it would be impossible to calculate the "excess" amount of time for which compensation should be made as non-line item work. Further, as to the cutting in of doors, even if the contractor could prove that this work was separate from framing of doors -- and it has not done so -- we have no basis for determining how much time was devoted to this activity. Cutting of walls occurred on one day during which McTeague employees worked thirty-two hours on two different tasks. The contractor did not specify, on its daily time record, how many of those hours were spent cutting walls. See Appellant's Exhibit 72 at 3.

No recovery is allowed under delivery order -0016.

Delivery order number P-04-97-RS-0106

McTeague claims that it is entitled to be paid an additional $24,350.40 for work performed at the Department of Labor's offices on the seventh floor of Brickel Plaza. This claim was made separately from all the others discussed in this opinion. McTeague requested additional compensation by letters to GSA dated September 21 and 22, 1998. Appeal File, Exhibit 10.36 at 4; Appellant's Exhibit 78. This request was first characterized as a claim in a letter from the contractor's attorney to Government counsel dated October 2, 1998. Appeal File, Exhibit 10.36 at 1-2. On September 21, McTeague asked for payments of $26,883.48, and on September 22, it asked for $33,034.63. Appeal File, Exhibit 10.36 at 4; Appellant's Exhibit 78. These amounts apparently overlap.

In her decision on this claim, the contracting officer agreed to pay $2,533.08, provided that McTeague submitted a proper invoice. Appeal File, Exhibit 10 at 11. McTeague's initial brief says that "[a] payment in the amount of $2,533.08 was received subsequent to the date of the initial claim." Appellant's Brief at 39. To the contrary, however, GSA's brief says that the agency has yet to receive the invoice necessary for processing of the payment. Respondent's Brief at 35. McTeague's Reply Brief asserts that the contractor "has submitted invoices" and that the agency's "excuse of nonpayment is transparent." Appellant's Reply Brief at 7. We conclude from this exchange that notwithstanding the statement in McTeague's initial brief, GSA has not yet paid the contractor the uncontested sum of $2,533.08. We direct the agency to make payment of this sum.

The claim itself is for additional payments to compensate McTeague for labor costs associated with framing a firewall (371 man-hours), skim-coating walls (229 man-hours), removing vinyl composition tile (VCT) (eighty-eight man-hours), and cutting in two doors (sixteen man-hours). Appellant's Exhibit 79. The claim is particularly difficult to understand because the hourly rates which are multiplied by these hours to determine the costs of each activity are, with one exception, not the rates which McTeague says it used to make the calculations. For framing and skim-coating, McTeague used an hourly rate of $28.50 to make its calculations, but says that the claim is based on a rate of $31.09 per hour. For cutting in the doors, the contractor used a rate of $28.50, but says that the claim is based on a rate of $32.00. Further, in totaling the four elements of the claim, McTeague made yet another arithmetic mistake.

The claim fails, however, for reasons far more significant than confusion about the appropriate labor rates or mathematical mistakes. The most important difficulty McTeague

faces here is that compensation for the kinds of work for which the contractor seeks additional payment is already provided for in line items. Framing of walls is included within line items for drywall partitions, and this delivery order included line items 59.02 and 59.04 (two-hour rated drywall partitions), in the total amount of 209 square meters. Appeal File, Exhibits 1 at 180-81, 321, 363; 10.37 at 2; Respondent's Supplemental Appeal File, Exhibit 6 at 13. Skim-coating of walls is included within line items for painting walls and installation of wallcovering, and this delivery order (as amended) included line items 87.01 (prime drywall) and 94.01 (paint two coats on drywall), in the amount of 499 and 471 square meters, respectively, and 76.05 (install vinyl wallcovering on drywall), in the amount of 501 square meters. Appeal File, Exhibits 1 at 207, 210, 324, 327, 364-65; 10.37 at 2; 10.37a at 10-11, 13; Respondent's Supplemental Appeal File, Exhibit 6 at 13. Removal of VCT is provided for in line item 1.32 (remove and discard resilient flooring), and this delivery order included this line item, in the amount of one hundred square meters. Appeal File, Exhibits 1 at 302; 10.37 at 2; Respondent's Supplemental Appeal File, Exhibit 6 at 13.

As with other claims, McTeague has made no effort to segregate the time it spent on line item work for the activities in question from the time it spent on what it alleges to be additional work. The daily time records for delivery order -0106 which are included in the record, and which Mr. McTeague points to as support for the claim, show only that the contractor devoted 557 man-hours on seventeen days to framing a firewall and other activities; 497 man-hours on eighteen days to skim-coating walls and other activities; and 240 man-hours on seven days to removing VCT and other activities. Appellant's Exhibit 80; Transcript at 106.

Further, McTeague presented evidence as to the extraordinary nature of the work as to only one of these activities, removing VCT. Mr. McTeague testified that GSA required that the contractor heat the tiles to remove them, rather than following standard trade practice of using a machine which chips and scrapes tiles, but is noisy. Transcript at 105. A note on one of the contractor's daily time records says that Mr. Jones "said he would adjust costs to help out."[11] Appellant's Exhibit 80 at 12. While this evidence could support entitlement to additional payment for extra labor costs associated with removal of the VCT, the record is insufficient to support a finding that eighty-eight man-hours, or any other amount of time, had to be devoted to this task because of GSA's demand that removal be performed without the use of an appropriate machine.

The record contains no support for the claim for payment for cutting in of doors, either. Although Mr. McTeague testified that "[t]here was two doors they wanted cut in, [and] we cut them in," the time records do not contain any notations of this work having been done. Transcript at 106; Appellant's Exhibit 80. Given the absence of such a notation, we accept on this point the testimony of Mr. Jones that no such work occurred on this project. See Transcript at 260.

We direct GSA to pay McTeague $2,533.08 under delivery order -0106.

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[11]The note on the daily time record pertains only to VCT removal, not, as McTeague suggests at page 40 of its brief, to skim-coating of the walls as well.

Delivery order number P-04-97-RS-0116

1. Work under the delivery order itself

McTeague claims that it is entitled to be paid an additional $1,102.47 for work performed at the United States Bankruptcy Court's space in the Claude Pepper Federal Building in Miami. The amount of the claim, as submitted to the contracting officer, was $7,965.81. Appeal File, Exhibit 7 at 3. The contracting officer determined that payment should be made in the amount of $6,738.35. Id., Exhibit 10 at 9. GSA has actually paid McTeague $6,863.34. Respondent's Supplemental Appeal File, Exhibit 7 at 1, 3.

McTeague did not complete all the work on this project to GSA's satisfaction. Appellant's Brief at 43. As occurred with regard to delivery order -0069, however, the reason that the work was not finished was not that the contractor abandoned the job, but rather that agency actions prevented completion. Mr. Jones asked McTeague to return to the site on a Saturday to finish the job, and McTeague made arrangements with the GSA official for contractor personnel to have access. Transcript at 107; Appellant's Exhibit 102. When McTeague employees arrived, however, they were not allowed into the area where work had to be done. Transcript at 107, 204, 228; Appellant's Exhibit 102. On a second occasion, McTeague employees were allowed into the area, but discovered notes from a GSA inspector directing them to install different flooring materials and an additional coat of paint. The contractor was not able to secure the materials and perform the work on that same day, without notice, and no GSA employees were available to assist in resolving the predicament. Id. at 205. We consider that the agency's actions excused McTeague from further responsibilities under the delivery order and require payment of the outstanding amount on the order, $1,102.47.

2. Additional matter

McTeague also claims that it is entitled to be paid an additional $833.08 to compensate it for the labor costs it incurred in sending three employees to the job site for the first effort to complete work which was frustrated by an inability to enter the area. This claim has been discussed by the parties under a heading of delivery order -0031, but it relates to order -0116, so we will address it here.

The date on which the McTeague employees traveled, for naught, from their office in Stuart, Florida, about 110 miles south to Miami, was February 28, 1998. Two days later, Mr. McTeague reported the incident to the contracting officer and asked that she reimburse the contractor for the labor costs it had incurred. Appellant's Exhibit 102. GSA has paid McTeague $500 in response to this request. Respondent's Supplemental Appeal File, Exhibit 9 at 5; Transcript at 120, 228.

According to GSA's Edward Zachary, Mr. McTeague called him to discuss this matter on the same day the letter to the contracting officer was dated. Mr. Zachary testified that the two men agreed that GSA would pay, and McTeague would accept, $500 in full payment for the contractor's costs. Mr. Zachary says that he immediately wrote the check. Transcript at 228-29. Documents contained in our record show, however, that Mr. Zachary did not initiate paperwork on this matter until October 1998 and did not write the check until

October 22 -- more than six months after McTeague had submitted its claim to the contracting officer in the amount of $1,333.08. Respondent's Supplemental Appeal File, Exhibit 9. We rely on the documents in concluding that Mr. Zachary's story does not ring true.

The parties agree that GSA is responsible for the costs McTeague incurred in sending its employees on a trip which the agency's actions rendered purposeless. The amount GSA should pay has not been agreed upon, however; it remains for us to determine. No objection has been raised to the calculation of burdened labor costs claimed by McTeague, $1,065.96.[12] See Respondent's Brief at 37. McTeague has added a markup for overhead and profit of twenty-five percent. Appellant's Exhibit 103. As GSA notes, this markup is different from the one which the contractor consistently argues, on all other claims, was standard under this contract -- twenty percent. Respondent's Reply Brief at 13. We apply a twenty-percent markup to the labor charges. The total cost of the trip, which GSA must pay, is $1,279.15. Subtracting from this figure the $500 which the agency has already paid, the remaining obligation is $779.15.

McTeague is entitled to be paid $1,881.62 on delivery order -0116.

Delivery order number AR96-6034

McTeague claims that it is entitled to be paid an additional $14,967.84 for work performed for the United States District Court for the Southern District of Florida. At hearing, GSA counsel conceded that $7,733.79 is due the contractor on this claim and stated that the amount would be paid once an invoice was sent. He was not prepared to ascribe this amount to any particular elements of the claim, however. Transcript at 109; see also Respondent's Brief at 19, 37.

According to a GSA building operations specialist, the district court took considerably more responsibility for administration of this delivery order than executive branch agencies affected by the work under other delivery orders took for their projects. Transcript at 421-22. No GSA witness testified knowledgeably about this order, and no court employee was called as a witness. Consequently, the only substantive testimony in the record on this claim comes from Mr. McTeague.

On one subject relevant to the claim -- the applicability of the agreement to substitute prices for provision and installation of drywall -- we have already determined that this witness's recollection is not accurate. We therefore deny the claim insofar as it seeks payment for drywall work at the rate for line item 59.02, rather than the rate for line item 58.02.

The remainder of the claim is in three parts -- modifications to line item quantities (and consequently, payments); addition of non-line items; and an unexplained amount which

[12]McTeague actually claims fifty cents more, but the difference is the result of yet another arithmetic error. See Appellant's Exhibit 103 ($25 x 1.5 x 1.41 = $423, not $423.50).

appears to be the difference between the delivery order amount and payments which McTeague has received.

The modifications to line item quantities, according to Mr. McTeague, are based on a walk-through of the project when complete, performed by McTeague personnel, and an invoice from subcontractor Imperial Electrical regarding work it did on the job. Transcript at 115-16; Appellant's Exhibits 91, 92. These documents do indeed support the modifications claimed. The net amount, at base prices, is $1,424.14 (pricing the additional quantity of drywall at the rate for line item 58.02). Subtracting the contractually-mandated discount of eighteen percent, the total is $1,167.79.

McTeague seeks payment of $5,071.95 for the non-line items it provided on this project. Appellant's Exhibit 90 at 2. If we were to agree with the contractor, we would find the total owing on this delivery order, aside from the third part of the claim, to be $6,239.74. McTeague did not elicit testimony on the third part of the claim and did not address this portion in its brief. Because we have no reason to award any of the third part, the highest amount we might grant to the contractor is $6,239.74. Since this amount is less than what GSA has conceded, we will simply grant to McTeague the higher amount conceded by GSA and dispense with analysis of the sum sought for non-line items.

GSA is directed to pay McTeague $7,733.79 on delivery order -6304.

Two additional invoices

1. Invoice number CC#128

McTeague claims that it is entitled to be paid $516 for installing Government-furnished carpet in hallways of the fifth floor of Miami's Brickel Plaza.

GSA issued to McTeague delivery order number P04-97-RS-0117 on September 5, 1997, for work in Brickel Plaza. The order was in the amount of $555 -- $500 for the installation of Government-furnished carpet in fifth floor hallways and $55 for electrical work on the ninth floor. Appeal File, Exhibit 10.34. On September 9, McTeague sent GSA an invoice for this work, in the amount of $555. Id., Exhibit 35 at 2. On September 10, a GSA inspector determined that the work had been completed and the agency authorized payment of the entire amount. Id., Exhibits 10.34a, 10.34b.

According to GSA's Mr. Jones, carpeting was installed in fifth floor hallways at Brickel Plaza only once. Transcript at 269-70. From this statement, GSA concludes that it has already paid for laying the carpet through its payment under delivery order -0117. Respondent's Brief at 38.

Mr. Jones also testified, however, that GSA asked McTeague to install carpet in Brickel Plaza fifth floor hallways in August 1997. Transcript at 267; see Respondent's Brief at 20. The invoice under which McTeague seeks payment of $516 is dated August 16, 1997. Appeal File, Exhibit 35 at 1; Appellant's Exhibit 112. Mr. McTeague testified that GSA never issued a delivery order for this work, and that a GSA employee (whom he did not identify) said that the agency would pay for the work with a credit card. Transcript at 121.

As McTeague notes, both the date and the amount on the invoice are different from those on the invoice for work under order -0117. Appellant's Brief at 48.

The evidence on this claim contains something to be said for each side. (And also something to be said for better recordkeeping by both parties, so that disputes like this one might be avoided.) The key piece of evidence, however, is Mr. Jones's uncontested statement that carpeting was installed in the location in question only once. If installation occurred only once, payment should be made for only one installation. McTeague has not even suggested that the payment under order -0117 was a partial payment. We conclude that it was full payment for laying carpet on the fifth floor of Brickel Plaza. The claim is denied.

2. Invoice number CC#103

McTeague claims that it is entitled to $1,000 as "Dumpster Fees for special order Same day pick-up." Appellant's Exhibit 111.

The contractor's support for this claim is testimony by Mr. McTeague. The contractor's president told the Board that on one job, his firm was not "allowed to have a dumpster anywhere near the building . . . . So the only thing we were allowed to do is put a dumpster in the back of the parking lot, which is quite a ways away, bring all the material[] down, put it in the pickup truck, lug it across the parking lot, and dump it into a dumpster." Transcript at 122. He testified further, "And I told them, . . . somebody's got to pay for this. It's going to be expensive. It's a thousand dollars." Id.

The location of the job in question is not clear. Mr. McTeague initially testified that it was "over there in the courts." Transcript at 122. His counsel then asked, "Now we talked earlier about a dumpster situation. [See discussion relating to delivery order -0059.] Is this the same or --." The response was, "No, this is different. . . . [T]hat was in Fort Lauderdale, and this one was the one down in Miami. There was a courthouse down in Miami across the -- well, it's down there." Id. at 122-23. The contractor has not explained the basis of its assertion that GSA should pay $1,000 because the dumpster was not allowed to be placed adjacent to the work site.

The contract does not say where dumpsters may be placed on jobs described in delivery orders. Regarding clean-up, it says only that the contractor "shall at all times keep the work area . . . free from accumulations of waste materials," and that it must "clean up the work area at the end of each work day." Appeal File, Exhibit 1 at 28, 49.

We agree with McTeague's implicit argument that a Government direction which increases the costs of complying with the contractual duty to clean up, beyond what may be reasonably anticipated, is a change in work for which compensation is due. We cannot agree, however, that the contractor has proved that compensation of $1,000 (or any other figure) is owed here. The subject of the claim is inconsistent -- the invoice seeks money for "special order Same day pick-up," but the supporting testimony is that costs increased because GSA required a dumpster to be placed far from the job site. The job on which the dumpster controversy arose is unclear. McTeague has provided no support for an award of the monetary amount it seeks. This claim is therefore denied.

We do not award any money to McTeague under the contractor's two invoices which are not identified by delivery order number.

Summary

We list here the delivery orders as to which McTeague claims additional money and for each, the amount claimed and the amount awarded by the Board:

Delivery order	Claim	Award
P-04-97-RS-0030	$ 16,607.66	$ 231.49
P-04-97-RS-0059	16,128.50	5,772.91
P-04-97-RS-0058	8,845.05	8,845.05
P-04-97-RS-0044	8,910.28	5,506.12
P-04-97-RS-0010	1,539.98	591.90
P-04-97-RS-0096	3,660.70	390.19
P-04-97-RS-0024	19,475.01	2,430.30
P-04-96-RS-0069	3,533.51	3,489.79
P-04-97-RS-0092	6,473.40	272.17
P-04-98-RS-0016	13,552.21	none
P-04-97-RS-0106	24,350.40	2,533.08
P-04-97-RS-0116	1,935.55	2,381.62
AR96-6034	14,967.84	7,733.79
Additional invoices	1,516.00	none
Total	$141,496.09[13]	$ 39,678.41

Decision

The appeal is **GRANTED IN PART**. GSA shall pay to McTeague the sum of $39,678.41. Interest is due on $37,145.33 (the sum awarded, less the amount attributable to the claim under delivery order P-04-97-RS-0106) from the date on which the contracting officer received the claims dated April 3, 1998, until the principal amount is paid. Interest

[13]McTeague's brief asks that the claims be granted in the amount of $138,889.71. Appellant's Brief at 50. The figure printed above is the sum of the various claims advanced in the brief.

is due on $2,533.08 (the amount attributable to the claim under delivery order P-04-97-RS-0106) from the date on which the contracting officer received the claim dated October 2, 1998, until the principal amount is paid. 41 U.S.C. § 611 (1994).

_____
STEPHEN M. DANIELS
Board Judge

We concur:

_____
ANTHONY S. BORWICK
Board Judge

_____
MARTHA H. DeGRAFF
Board Judge