BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of CONCRETE GENERAL, INC.	)	
	)	Docket No. MSBCA 1062
Under SHA Contract No. AW-508-501-377	)	

November 7, 1984

Contract Interpretation - The contra proferentem rule providing that an ambiguity in a contract is construed against the drafting party was not applicable where the discrepancy between the contract special provisions describing the concrete highway patch to be provided and a contract sketch of the highway patch was so glaring as to constitute a patent ambiguity.

Patent Ambiguity - Duty To Inquire - A contractor presented with an obvious discrepancy between the contract special provisions describing the highway patch required and a sketch of a highway patch included in the contract had a duty to inquire about the discrepancy prior to bid or risk being awarded the contract and held to the State's interpretation.

Contract Interpretation - The contra proferentem rule was not applicable to resolve an ambiguity against the State as the drafting party where the contractor's interpretation of the concrete highway patch required was inconsistent with the plain meaning of the specifications and thus unreasonable.

Contract Interpretation - Since the contractor's interpretation rendered meaningless the contract special provision requiring that concrete for the highway patch be placed beneath the existing pavement, it was rejected as unreasonable in favor of the State's interpretation which required concrete to be placed beneath the pavement and thus harmonized all provisions of the contract.

Mistake in Bid - Discovered Before Award - A contractor who accepted contract award, in the absence of a protest or other reservation of its rights, knowing that there was a mistake in its bid based on a differing State interpretation of the contract requirements, was obligated to proceed in accordance with the State's interpretation.

Imputed Knowledge - The actions of a State employee who had no authority to act contractually on behalf of the State could not bind the State in the absence of clear evidence imputing the State employee's pre-award knowledge of the contractor's interpretation of the contract to an authorized State official.

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OPINION BY MR. KETCHEN

This appeal is taken from a final decision issued by the State Highway Administrator denying Appellant's claim for additional costs incurred in completing highway pavement repairs in a manner directed by the State Highway Administration (SHA) Engineer. Only entitlement is at issue.

Findings of Fact

1. On April 28, 1981, the SHA issued a request for proposals (IFB)[1] for pavement repairs to State routes Md. 202, Md. 212, Md. 458 and Md. 97 through Montgomery and Prince George's counties. Bids were to be submitted on June 4, 1981. The IFB estimated that 15,500 square yards of concrete would be required for Type I pavement repair patches.

2. A Type I patch is described in the IFB at pages 23-26 in pertinent part, as follows:

> TYPE I - Full depth pavement repairs up to five feet long as measured longitudinally.
>
> 1. Removal of Existing Pavement - Existing pavement will be removed by making a saw cut of at least two inches along all edges not bounded by joints. Care shall be taken not to cut through existing wire mesh reinforcing on one side of the patch area. At least 12 inches of wire mesh shall be allowed to remain on 1 side of the patch area (see sketch included in these Special Provisions). On the side where it is not required to save the wire mesh, the Contractor will be permitted to saw completely through the existing pavement.

[1] A request for proposals in this competitive sealed bid procurement means invitation for bids (IFB). Supplement to Specifications for Materials, Highways, Bridges and Incidental Structures (August 1980), §101.05, Definitions.

Under this section, patches will be a minimum of three feet long as measured longitudinally along the roadway. Concrete shall be removed to its full depth within the limits of the patch area.

* * *

After the old concrete has been removed, the existing subbase material will be excavated to a minimum depth of six inches and extend under the existing slab, on each side of the patch area, a minimum of six inches (see sketch included in these Special Provisions). Excavation of the subbase may be done by a method of the Contractor's choosing provided he obtains a good cross section beneath the existing slabs as previously noted.

2. Subgrade Preparation - Following the removal of the old concrete and the excavation of 6 inches of the existing subbase, the subgrade shall be brought to line and grade, and thoroughly compacted by mechanical means to the satisfaction of the Engineer. When the subgrade is dry, it shall be sprinkled with as much water as can be readily absorbed immediately in advance of placing the concrete.

3. Contingent Removal of Unsuitable Material and Refill[2] - When, in the opinion of the Engineer, the underlying subgrade and/or subbase is unsuitable, the Contractor will be required to excavate the unsuitable material to the dimensions designated by the Engineer. The refill material will be of a type as previously noted, thoroughly compacted in layers not greater than four inches in depth and in no case shall the refill material be less than nine inches of compacted total depth.

* * *

6. Joints - A "Contraction Type Joint" will be constructed at each patch. The joint will be placed on the side of the patch opposite the side with the wire mesh protruding from the existing slab (see sketch). . . .

* * *

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[2]The contract Special Provisions at page 20 provide, in pertinent part, as follows:

2. SUBBASE (REFILL)

When unsuitable material is removed, in the patch area, the refill material shall be a type which is characteristic of the area in which the work is being performed and meeting one of the following requirements: . . .

7. Placing Concrete - . . . The concrete mix shall be placed in the patch area using a metal chute; . . . If the concrete does not fall into its final position in the patch, it shall be moved by means of shovels; raking is prohibited. The concrete shall be worked with tampers, spades, or other tools to completely fill the patch area. To insure that the area beneath the existing concrete pavement is completely filled, internal vibration will be used but shall be kept to a minimum. An epoxy bonding material will be applied to the vertical face of the existing pavement on the side where the existing wire mesh is to be utilized.

* * *

12. Basis of Payment - Type of Repair

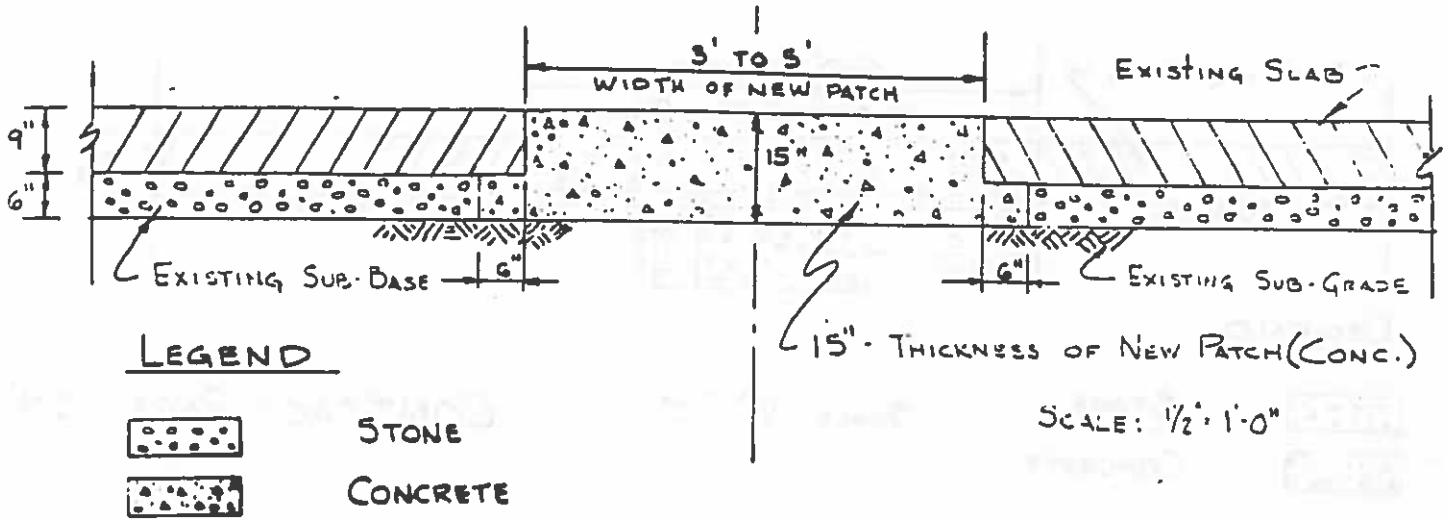
a) Type I Repairs will be paid for at the contract unit price bid per Square Yard for the item "Type I Repair" which price and payment will be full compensation for the furnishing, hauling, and placing of all materials including admixtures, epoxy bonding, compound and joint sealing compound, the removal and disposal of old concrete, the excavation of subbase material, subgrade preparation, all labor, tools, equipment, and incidentals necessary to complete the item. . . .

b) Contingent Removal of Unsuitable Material and Refill - This item will be paid for at the contract unit price bid per Cubic Yard for the item, which price and payment will include the excavation, disposal, refill material, compaction, labor, tools, equipment, and incidentals necessary to complete the item. (Underscoring added).

The contract Special Provisions do not specify the thickness of the concrete pavement to be removed. However, State roads in Maryland that are constructed of concrete typically are nine inches thick.

3. A sketch of the Type I patch referenced in the contract Special Provisions ordinarily is included in SHA contracts but inadvertently was omitted from the contract documents in this instance. The sketch of the

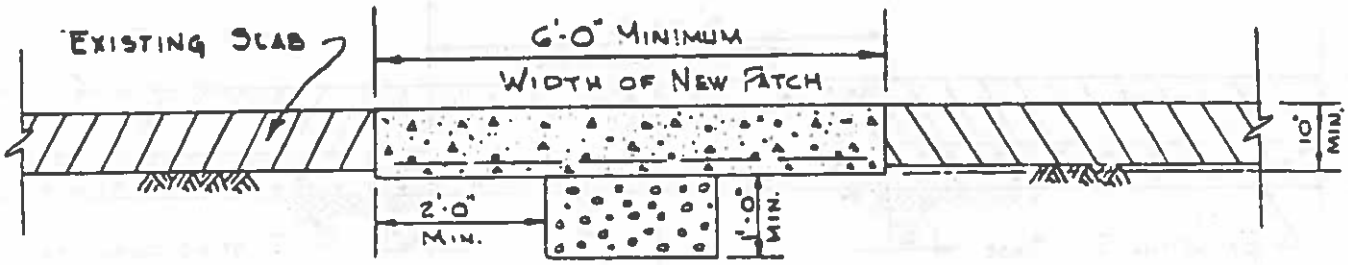
Type I patch SHA intended to include with the Special Provisions appears as follows:



The omitted sketch comports with the contract Special Provisions requiring removal of the existing pavement (nine inches) and excavation of six inches of existing subbase material to a width extending six inches beneath the pavement on either side of the patch area. The extent of removal of the existing pavement and subbase material consistent with this sketch is not disputed by either party. (Tr. 34).

4. The IFB contains a sketch at page 54-C of the contract documents that is labeled "Standards for Highways and Incidental Structures, Cutting & Repairing Road Openings Made By Utility Companies." The sketch states that it is for use only where underground facilities are to be placed below a

roadway. This sketch shows the following:



LEGEND

STONE

CONCRETE

SCALE: 1/2" = 1'-0"

CONTRACT PAGE · 54C

5. A comparison of the sketch at page 54-C of the contract and the contract Special Provisions describing the Type I patch reveals the following inconsistencies:

a. The contract Special Provisions require removal of the existing nine inch concrete pavement and excavation of subbase material to a minimum depth of six inches extending a minimum of six inches longitudinally under the existing slab on each side of the patch area. The contract Special Provision describing this excavation specifically refers to a sketch to illustrate the intended configuration of the excavation area extending beneath the existing pavement. (Findings of Fact No. 2). The Special Provisions do not state expressly that the patch excavation is to be refilled with subbase material.

The sketch at page 54-C of the contract indicates an excavation of nine inches of pavement and 13 inches of subbase (a total excavation of 22 inches). It does not indicate that the excavation was to extend horizontally six inches under the pavement on both sides. It shows a 10 inch thick concrete patch and a subbase starting at 10 inches below the top of the pavement. The subbase is a minimum of 1' in thickness and two feet wide. In this sketch, the 10 inches of concrete also is shown covering a subgrade or subbase of unspecified material, located two feet on either side of the stone subbase. (Findings of Fact No. 4).

b. The contract Special Provisions expressly state that at least 12 inches of wire mesh reinforcing shall be allowed to remain on one side of the patch area and specifically refer to a sketch included elsewhere therein. The contract Special Provisions also state that a contraction type joint will be constructed at each patch opposite the side with the wire mesh protruding from the existing slab, again referring to a sketch.

The sketch at page 54-C of the contract neither mentions nor provides any design details regarding either the wire mesh or the contraction type joint.

c. The contract Special Provisions require a Type I pavement repair patch of three to five feet in width measured longitudinally.

The patch described in the sketch at contract page 54-C requires a patch that is a minimum of six feet wide measured in the longitudinal direction. In addition, the notes on the sketch provide that whenever a trench crosses a concrete roadway that has joint installations, the entire slab between the joints, approximately 20 feet apart, is to be removed and replaced.

d. The contract Special Provisions require application of an epoxy bonding material to the vertical face of the existing pavement on the side where the existing wire mesh is to be utilized.

The sketch at page 54-C specifies that the edges of the pavement are to be clean and wet before placing concrete.

e. The contract Special Provisions implement the stated purpose of the contract to complete concrete pavement repairs on various routes in Prince George's and Montgomery Counties.

The sketch at page 54-C indicates that it is to be used for cutting and repairing road openings made by utility companies, not for repairing defects in highway pavements.

6. Appellant submitted its bid in the aggregate amount of $1,126,330.00 on June 4, 1981. Under bid item No. 501, Appellant bid $66.00 per square yard of concrete for the estimated 15,500 square yards required for Type I concrete pavement repairs. The extended lump sum amount for this item was $1,023,000.00.

7. In preparing its bid, Appellant interpreted the contract as requiring it to fill the 15 inch deep excavation with six inches of subbase material covered by nine inches of concrete. Under this interpretation, concrete would not have been poured beneath the existing concrete slab.

8. Bids were opened on June 4, 1981.

9. By letter dated July 14, 1981, SHA advised Appellant that it was the apparent low bidder. Other bids received ranged from the next lowest bid of $1,322,444.50 to the highest bid of $1,856,715.00.

10. In late June or early July 1981, Appellant became concerned that its bid was significantly lower than the next higher bid. Part of Appellant's concern was based on the fact that in 1978 it had observed an SHA Type I patch being poured by another contractor. This patch required 15 inches of concrete rather than the nine inches assumed in Appellant's bid. Appellant's President thus contacted Mr. Robert Ambush, an SHA employee with whom he was acquainted, and conveyed Appellant's understanding of what the contract required for a Type I patch. Although Mr. Ambush had no contractual authority, he explained to Appellant's President that his interpretation was not

what SHA typically required in a Type I pavement repair patch. The record does not indicate that Mr. Ambush informed any SHA official of his discussion with Appellant's President concerning the contract's Type I patch requirement. Further, the record does not indicate that, prior to contract award, any SHA procurement official actually was aware of Appellant's interpretation.

11. On August 5, 1981, based on a request by Appellant, Mr. Ambush provided Appellant's President with a rough sketch of the typical Type I patch that SHA uses in its pavement repair contracts. This rough sketch showed a concrete patch 15 inches thick, resting on a subgrade and extending horizontally six inches under the existing nine inch pavement on both sides of the pavement opening and was similar to the sketch of the Type I patch which SHA inadvertently had omitted from the instant contract. (See Findings of Fact No. 3).

12. After receiving the sketch furnished by Mr. Ambush, Appellant still did not inform an SHA official having contractual authority of any error in its bid or the confusion caused it by the sketch contained at page 54-C. Appellant further elected not to withdraw its bid.

13. Appellant received notice of contract award on September 2, 1981, executed the required contract documents and returned them to SHA. SHA executed the contract documents on September 18, 1981.

14. At the preconstruction conference on September 25, 1981, Appellant informed SHA officials that its bid had been based on a requirement for only nine inches of concrete covering six inches of subbase refill material. Appellant further indicated to these officials that it had relied on the contract Special Provisions and the sketch at page 54-C of the contract in developing its bid. SHA informed Appellant, however, that the entire volume created by removal of nine inches of pavement and six inches of subbase, including the six inches of excavation underneath the existing concrete slab, would have to be filled with concrete. SHA's directive in this regard was consistent with the Special Provisions describing the Type I patch and the sketch Mr. Ambush had provided to Appellant on August 5, 1981. (See Findings of Fact No. 11).

15. By letter dated November 27, 1981, Appellant requested an equitable adjustment for the additional costs it incurred in pouring the concrete patch to a depth of 15 inches rather than to a depth of nine inches.[3]

16. On December 29, 1981, a final decision was issued denying Appellant's claim for an equitable adjustment.

17. By letter dated January 28, 1982, Appellant filed a timely notice of appeal.

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[3]Appellant's bid was based on providing a patch consisting of nine inches of concrete over six inches of subbase material. However, Appellant discovered prior to hearing that it had misread the sketch at page 54-C which indicates a concrete patch 10 inches thick instead of nine inches. Accordingly, in recognition of the mistake, Appellant's claim is for the additional five inches of concrete it had to provide in lieu of an additional six inches of concrete.

18. The parties stipulate that the cost to pour the additional concrete was $8.80 per square yard.

Decision

There is no dispute concerning the configuration of the area to be excavated for the highway patch. (Tr. 9, 12). It is 15 inches deep requiring excavation of nine inches of existing pavement and six inches of subbase material. The excavation is required to extend six inches underneath the existing pavement on either side of the vertical excavation through the pavement. (Findings of Fact No. 3). After the excavation for the patch, the Special Provisions require the contractor to bring the subgrade to line and grade prior to pouring the concrete to fill the area. (Findings of Fact No. 2). The central dispute in this appeal arises because a sketch placed in the IFB at page 54-C shows a 10" concrete patch and a crushed stone, slag, or gravel subbase located 10" below the top of the pavement. (Compare Findings of Fact Nos. 3 and 4). Appellant thus maintains that it reasonably interpreted the contract Special Provisions read in conjunction with the sketch at page 54-C to require it to refill the full width of the 15" deep excavation first with subbase material up to a subgrade line located 10" below the pavement's surface, as shown on the sketch. The remainder of the excavation was then to be filled with concrete. In this regard, Appellant invokes the contra proferentem rule providing that ambiguities in contract documents are to be construed in favor of the non-drafting party if that party's construction is reasonable.

SHA, on the other hand, contends that the contract Special Provisions required the entire 15" deep area excavated for the patch to be filled with concrete. While SHA concedes that it mistakenly included an erroneous sketch describing the patching requirements in the IFB, it maintains that it was not required to shoulder the burden of the mistake in this instance since there was no ambiguity regarding what the contract Special Provisions required. It further argues that the obvious discrepancy between the erroneous sketch and the description of the patch in the contract Special Provisions was sufficient to impose a duty upon Appellant, under the terms of the IFB,[4] to seek clarification from SHA officials prior to submitting its bid.

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[4]The Supplement to Specifications for Materials, Highways, Bridges and Incidental Structures (August 1980) incorporated by reference in the Special Provisions provides:

> 105.04 DISCREPANCIES IN THE CONTRACT DOCUMENTS. In the event the Contractor discovers any discrepancies in the Contract Documents, he shall immediately notify the Engineer. The Engineer will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract.
>
> 105.04.01 These Specifications, the Supplemental Specifications, the Plans, Special Provisions and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In the event of any discrepancy between the drawing and figures written thereon, the figures, unless obviously incorrect, will govern over scaled dimensions.

Generally, an ambiguity in a contract document is construed against the drafter. Canaras v. Lift Truck Services, Inc., 272 Md. 337, 322 A.2d 866 (1974); Kelley Const. Co v. Washington Suburban Sanitary Comm., 247 Md. 241, 250, 230 A.2d 672, 678 (1967); Cadem v. Nanna, 243 Md. 536, 221 A.2d 703 (1966); Kings Electronics Co., Inc. v. United States, 169 Ct.Cl. 433, 341 F.2d 632 (1965); Hughes & Co. v. Pioneer Fireproof Door Corp., 230 Md. 36, 38, 185 A.2d 383, 384 (1962). However, this rule of contra proferentem is limited by the following:

> "While ambiguous contract provisions are construed against the author (Peter Kiewit Sons' Co. v. United States, 109 Ct.Cl. 390 (1947)), and a contractor is not usually obligated to seek clarification of all interpretative problems inhering in the contract terms, he must nevertheless inquire where the discrepancy, omission or conflict is obvious (Consolidated Eng'r. Co. v. United States, 98 Ct.Cl. 256, 280 (1943); Jefferson Construction Co. v. United States, 151 Ct.Cl. 75, 89-91 (1960)), and most particularly so when a specification provision affirmatively warns him of such possible discrepancies in the plans (WPC Enterprises Inc. v. United States, 163 Ct.Cl. 1, 6, 323 F.2d 874, 876 (1963), and collated authorities), or where a contract article requires him to submit detected discrepancies to the contract officer for decision (Beacon Construction Co. v. United States, 161 Ct.Cl. 1, 6, 314 F.2d 501, 504 (1963))."[2] (Footnote omitted).

Jefferson Const. Co. v. United States, 176 Ct.Cl. 1363, 1368-69, 364 F.2d 420 (1966). Compare Blount Brothers Construction Co. v. United States, 171 Ct.Cl. 478, 346 F.2d 962 (1965); Martin G. Imbach, Inc., MDOT 1020 (May 5, 1983).

In the case of any discrepancy between the Plans and the Specifications, the Plans will govern. If there is a discrepancy between these standard Specifications and Supplemental Specifications, the Supplemental Specifications will govern. Special Provisions will govern over Specifications, Supplemental Specifications and Plans. General Provisions will govern over all Contract Documents unless expressly provided for in the Contract.

In order to resolve disputes involving ambiguous provisions, a two step analysis is required. The first requires a determination of whether there is an obvious ambiguity of significance giving rise to the contractor's duty to seek clarification from the procurement officer prior to bidding. Mountain Home Contractors v. United States, 192 Ct.Cl. 16, 20-21, 425 F.2d 1260, 1263 (1970). What constitutes an obvious or glaring discrepancy cannot be defined generally but is made on a case-by-case determination based upon an objective standard of what a reasonable man would determine to be patent and glaring. L. Rosenman Corporation v. United States, 182 Ct.Cl. 586, 590, 390 F.2d 711 (1968); HRH Construction Corp. v. United States 192 Ct.Cl. 912, 428 F.2d 1267 (1970). The second step requires a determination of whether the contractor's interpretation is reasonable. This step in the analysis is reached only if it is decided that the discrepancy, omission, or inconsistency did not create a patent ambiguity giving rise to the contractor's duty to make inquiry prior to bidding. Mountain Home Contractors v. United States, supra; George E. Newsom, 676 F.2d 647 (1982).

In the contract before us, the Special Provisions describing the patch procedure do not state that the excavated patch was to be refilled with any subbase material. Thus, under the heading of "Placing Concrete", the contract Special Provisions give directions for physically moving the poured concrete to its final position, including directions on how to insure that the area excavated beneath the existing concrete pavement is completely filled. (Findings of Fact No. 2). In this regard, the contract Special Provisions state that after excavation of the concrete pavement and six inches of subbase material, the subgrade is to be brought to line and grade in advance of placing the concrete. The Special Provisions do not pinpoint the location of the subgrade, although the incorporated specifications state that the subgrade is to be located below the pavement or below the subbase.[5] Some confusion is added because the Special Provisions in describing the contingent removal of unsuitable material are not specific concerning use of the terms subgrade and subbase and what is meant by the term "underlying."[6] (Findings of Fact No. 2). Thus, the Special Provisions state that after "underlying subgrade and/or subbase [that] is unsuitable" is removed, the excavation created is to be filled with "Subbase (Refill)." (Findings of Fact No. 2).

Appellant looked to the sketch at page 54-C for assistance in interpreting the requirements of the Special Provisions for refilling the patch excavation. While the sketch did not resemble the configuration of the patch described in the specifications, it did show a subbase located immediately

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[5]The Supplement To Specifications for Materials, Highways, Bridges and Incidental Structures (August 1980), $101.05, defines "subgrade" as "[t]he material in excavation (cuts) and embankments (fills) immediately below any subbase, base, pavement, shoulder or other improved course." (Underscoring added).

"Subbase" is defined as "[t]he layer or layers of specified selected material of designed thickness placed on a subgrade to support a base course."

[6]However, it should be noted that the provision regarding "Contingent Removal of Unsuitable Material and Refill" involves a bid item separate from the Type I patch repair item and is to be paid for separately on a cubic yard basis.

below a 10" thick concrete patch. Appellant in preparing its bid thus used this sketch to interpret the contract Special Provisions as requiring it, before pouring the concrete, to refill the 15" excavation with 6" of subbase material to the subgrade line it concluded was formed by the bottom of the concrete patch and the top of the subbase shown on the sketch. (Tr. 33-34).

Appellant's interpretation, however, raises several difficulties which rest on obvious inconsistencies between the sketch and the Special Provisions. First, it does not resolve the basic and glaring inconsistency between the configuration of the patch shown in the sketch and the configuration of the Type I patch excavation that Appellant concedes was described in the Special Provisions. (Compare Findings of Fact Nos. 3 and 4). As previously found, the sketch neither shows the six inch undercut of the pavement, the 12 inch wire mesh, nor the location of the contraction joint. These were the very elements for which the sketch was referenced in the Special Provisions. Secondly, the sketch shows a one foot thick by two foot wide subbase centered beneath only a third of the concrete patch. (Findings of Fact No. 4). The patch depicted by the sketch is a minimum of six feet in width measured longitudinally while the patch described by the contract Special Provisions is only three to five feet in width measured in a longitudinal direction. In addition, the note on the sketch clearly states that it was to be used for repairing trenches made by utility companies to place underground facilities.

Here Appellant first was faced with the obvious discrepancy between the configuration of the patch shown on the sketch and the configuration of the patch described by the contract Special Provisions and, second, with the obvious inconsistency between the subbase shown on the sketch and its interpretation of the subbase configuration required by the Special Provisions. It thus had a duty pursuant to §105.04 of the Standard Specifications to seek clarification from appropriate procurement officials, or risk being awarded the contract and held to the State's interpretation. Pettinaro Constr. Co., Inc., DOTCAB No. 1257 83-1 BCA ¶16,536. Compare S.O.G. of Arkansas v. United States, 212 Ct.Cl. 125, 546 F.2d 367 (1977); HRH Constr. Corp. v. United States, supra; Peter Kiewit Sons' Co., ENGBCA No. 4630, 83-2 BCA ¶16,778. Since Appellant chose instead to bridge the obvious gap created between the sketch and the Special Provisions in its favor, without seeking clarification of appropriate SHA procurement officials, it is not entitled to recover. Beacon Construction Co. v. United States, 161 Ct.Cl. 1, 6, 314 F.2d 501, 504 (1963).

Here, we have determined that the discrepancy created by the erroneous sketch was so glaring as to constitute a patent ambiguity. This gave rise to Appellant's duty of inquiry under the patent ambiguity exception to the contra proferentem rule. Assuming, arguendo, that the discrepancy was not so obvious as to require Appellant to inquire prior to bidding, the contra proferentem rule still is not applicable since Appellant's interpretation of the contract requirements for the patch is not reasonable.

Appellant contends that the sketch at page 54-C established the subgrade as coincident with the top of the subbase. This interpretation, we are told, harmonizes the patch requirements as depicted on the sketch and the definition of subgrade as the material located both below the pavement and below the subbase. We disagree. Appellant's interpretation ignores the fact that the specifications define "subgrade" and "subbase" in distinctly different terms as follows:

"Subbase - The layer or layers of specified material of designed thickness placed on a subgrade to support a base course.

* * *

"Subgrade - The material in excavation (cuts) and embankments (fills) immediately below any subbase, base, pavement, shoulder or other improved course." (Underscoring added).

Supplement to Specifications for Materials, Highways, Bridges and Incidental Structures (August 1980), § 101.05, Definitions. Reading the definitions of subgrade and subbase together, as we must, the plain meaning is that the subgrade is the lower most reference point on which the highway structure is begun. (Tr. 107-08, 221). This is so whether the first layer of material to be placed on the subgrade is the pavement itself or an intermediate layer of material such as a subbase. Thus, if the design calls for a subbase and other intermediate courses, these are placed in sequential layers over the top of the subgrade. If there is no subbase, or other intermediate course, the pavement is placed directly on the subgrade. When a subgrade is brought to line and grade, therefore, it is an operation separate and distinct from the placement of subbase material.

Contract Special Provision ¶7, p. 25 further provides that:

"Placing Concrete - . . . If the concrete does not fall into its final position in the patch, it shall be moved by means of shovels; raking is prohibited. The concrete shall be worked with tampers, spades, or other tools to completely fill the patch area. To insure that the area beneath the existing pavement is completely filled, internal vibration will be used but shall be kept to a minimum.

Appellant's bid, however, assumed a nine inch thick concrete patch covering a six inch layer of newly placed subgrade material. (Exh. A-1; Appeal file, Tab IV, B). Under this interpretation, concrete was not to be placed beneath the existing road pavement and, hence, the language of Special Provision ¶7 was meaningless. Since SHA's interpretation harmonizes all provisions of the contract including Special Provision ¶7, we again reject Appellant's interpretation as unreasonable. Compare Cam Construction Co., MSBCA 1088 (October 25, 1983); Mass Transit Administration v. Granite Construction Co., 57 Md. App. 766, 471 A.2d 1121 (1984).

Finally, if we again assume, arguendo, that there was no patent discrepancy giving rise to Appellant's duty to seek clarification prior to bidding, Appellant's pre-award actions nevertheless would bar its entitlement to an equitable adjustment under the contract's remedy granting provisions. In the absence of evidence of coercion or duress, a protest, or some other reservation of rights, a contractor who accepts contract award with full knowledge of a mistake in its bid impliedly agrees to absorb the error. P. Flanigan and Sons, Inc., MSBCA 1068 (June 17, 1983). Compare Massman Constr. Co. v. United States, 102 Ct.Cl. 699, 716-19, 60 F. Supp. 635, 642-44 (1945), cert. denied, 325 U.S. 866 (1945). In this regard, a contractor may not accept award of a State contract knowing that its interpretation differs from that of the State and expect to recover later on a claim based on this defect, without first obtaining an agreement with the State that the claim be

resolved contractually. Compare Johnson Controls, Inc. v. United States, 229 Ct.Cl. 445, 671 F.2d 1312 (1982);[7] Wickham Contracting Co., Inc. v. United States, 212 Ct.Cl. 318, 328-29, 546 F.2d 395, 400-01 (1976). In the absence of a contractual reservation of right, the contractor is bound by the State's interpretation and cannot later claim that it thought something else was meant. Compare Perry & Wallis, Inc. v. United States, 192 Ct.Cl. 310, 314-15, 427 F.2d 722, 725 (1970); Granite Construction Co., MDOT 1011 (July 29, 1981); Cresswell v. United States, 146 Ct.Cl. 119, 173 F. Supp. 805 (1959).

Here Appellant had reason to know prior to award that its interpretation of the contract requirements pertaining to Type I patching may not have been what the SHA intended. In order to assess this perceived problem, without directly disclosing it to authorized SHA procurement officials, Appellant's President contacted a lower level SHA employee familiar with Type I patching. The employee, Mr. Ambush, confirmed that Appellant's interpretation was incorrect. Appellant, nevertheless, accepted award of the contract without ever apprising SHA procurement officials of its mistake, presumably to prevent the invitation for bids from being cancelled or an award being made to another bidder. Under such circumstances, we find that acceptance of award, without protest or other reservation of rights, obligated Appellant to proceed in accordance with the SHA's interpretation.

In so ruling, we have not disregarded Appellant's argument that SHA had an obligation to reject its bid upon learning, through Mr. Ambush, that a mistake had been made. By issuing an award instead, the SHA is said to have impliedly accepted Appellant's interpretation. We disagree.

Mr. Ambush had no authority to act contractually on behalf of SHA. The IFB further did not authorize Mr. Ambush to answer questions concerning the contract requirements. Compare Department of General Services v. Cherry Hill Sand and Gravel Co., 51 Md. App. 299, 443 A.2d 628 (1982). Accordingly, Mr. Ambush's actions cannot bind SHA in the absence of clear evidence which would impute Mr. Ambush's knowledge concerning Appellant's interpretation to an authorized SHA official. Compare Mass Transit Administration v. Granite Construction Co., 57 Md. App. 766, 471 A.2d 1121 (1984).

For the foregoing reasons, therefore, Appellant's appeal is denied.

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[7] Affirming in part, reversing in part, Johnson Controls, Inc., VACAB No. 1197, 80-1 BCA ¶14,212; reversing Johnson Controls, Inc., VACAB No. 1197, 79-1 BCA ¶13,763.