BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In Re Appeal of	)	
	)	
JACKSON R. BELL, INC.	)	
	)	MSBCA Docket No. 1851
Under MTA Contract No.	)	
SRA 4999 - 252	)	
	)	

March 26, 1996

Equitable Adjustment - Consultants - Where record reflects contractor's method of compensation is reasonable and not otherwise in conflict with COMAR or contract cost principles, Board will allow payment pursuant to contractor's method of compensation. Board found it was reasonable to charge the State for more hours than 174 per month per person without actually paying personnel time-and-a-half overtime, where the record reflected that such hours were actually worked inspecting manufacture of railroad cars under the contract.

Interpretation of Contracts - Latent Ambiguity - Where contractor in good faith forms a reasonable interpretation of language in State-developed bid and contract documents which interpretation is not facially contradicted in such documents, and actions and omissions by the State support its interpretation, any conflict or ambiguity concerning the proper interpretation of the contract documents may be said to be latent. Based on the doctrine of contract proferentum, the contractor may be paid pursuant to its reasonable interpretation of the contract documents.

APPEARANCES FOR APPELLANT	H. Dean Bouland, Esq. Paul D. Raschke, Esq. Catherine C. Hester, Esq. Gisriel & Brush, P.A. Baltimore, MD
APPEARANCES FOR RESPONDENT	Douglas G. Carrey-Beaver Assistant Attorney General Baltimore, MD

OPINION BY BOARD MEMBER STEEL

Appellant, Jackson R. Bell, Inc. (JRBI) timely appeals the decision of the Maryland Mass Transit Administration (MTA) to disallow $279,127 in expenses and fees billed by JRBI for engineering and inspection services in connection with the purchase and production of MARC

commuter rail cars. The parties disagree whether the contract was an all-inclusive or cost-plus-fixed fee contract, and whether certain disallowances made by MTA's auditor were proper.

Findings of Fact

1. In the spring of 1989, MTA's predecessor, the State Railroad Administration (SRA) issued a request for proposals for engineering and on-site inspection services for newly-built and refurbished MARC commuter rail cars during the manufacturing process.

2. A pre-proposal meeting was held on May 16, 1989 attended by two JRBI employees. At the meeting, those present were informed that the contract could be bid on an all-inclusive or cost-plus-fixed fee basis, and that the State preferred an all-inclusive rate. The initial cost summary contained the phrase "all-inclusive" at the top.

3. Minutes of the pre-proposal meeting issued on May 22, 1989 reiterated that "[f]irms do have the option of using an all-inclusive or cost-plus fixed fee rate schedule", although a Cost and Price Summary included with the minutes did not have the entry "all-inclusive" at the top. However, SRA's Mr. Nessel testified that contractors were expected to use the revised schedule form for either cost-plus fixed fee or all-inclusive rates. JRBI submitted its cost proposal using the Cost and Price Summary form provided by the SRA in June of 1989.

4. In September, 1989, SRA asked all offerors to extend their cost proposals to the end of the month, and JRBI agreed to do so, and agreed to keep its price proposal in effect.

5. On September 14, 1989 by letter, JRBI was informed that SRA was readvertising the request for proposals for the instant contract. Sent with this letter was a copy of the Maryland Department of Transportation's Architectural and Engineering Consultant Selection Internal Guidelines (A&E Guidelines). [1]

6. No new pre-proposal meeting was held, and JRBI submitted a technical proposal on October 31, 1989. On November 16, 1989, JRBI was advised that it had been selected as the contractor with the highest technical rating and JRBI thereafter engaged in two price negotiation meetings with SRA representatives.

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[1] Step 22 of the Guidelines states "that all prices shall be submitted and evaluated on a cost-plus-fixed fee basis unless otherwise requested by the transportation agency." The Board finds that this language allows for either a cost-plus-fixed fee contract, or an all-inclusive rate contract.

7. During the price negotiations, the parties never addressed the cost-basis for JRBI's rates. SRA officials expressed concern about the overall cost of the proposal, and Mr. Nessel stated that he would "never pay a 'loaded rate' of more than $55 per hour for an inspector." However, SRA officials did not inquire of JRBI how their proposed rates were arrived at, and did not order a pre-award review of JRBI's accounting procedures.

8. The Contract document states under "CONSULTANT- Basis of Payment" that "[p]rices for services to be performed under this contract shall be those set forth in the Consultant's Cost and Price Summary as accepted by the Administration."

9. SRA accepted the Appellant's Cost and Price Summary as submitted, and following further submission to the Board of Public Works, entered into a contract on February 7, 1990. [2]

10. Included as part of the contract documents is an affidavit signed by Mr. Bell on behalf of JRBI as follows:

> 5. TRUTH-IN-NEGOTIATION-CERTIFICATE
>
> * * *
>
> I HEREBY CERTIFY to the best of my knowledge, information and belief that:
>
> (a) The wage rates and other factual unit costs supporting the Contractor's compensation, as set forth in the proposal, are accurate, complete and current as of the time of the contracting;
>
> (b) It is my understanding and the understanding of the Contractor I here represent that if any of the items of compensation under the above-mentioned contract were increased due to the furnishing of inaccurate, incomplete or non-current wage rates or other units of costs, the State is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. It is also my understanding and that of the Contractor I here represent that the State's right of adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor;

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[2] The State notes that in the package of material transmitted on December 18, 1989 to the Transportation Professional Services Selection Board (TPSSB) at MDOT for approval and in the TPSSB's January 8, 1990 certification to the Board of Public Works, the basis for payment is designated as "Cost plus fixed fee." Further, the State argues that the contract is designated "cost plus fixed fee" in the Notice of Award published in the Maryland Register of March 16, 1990, a public document. There is not clear evidence that JRBI had access to the transmission documents to the TPSSB or the Board of Public Works, and it is noted that the Notice of Award of which Appellant is held to constructive notice, was published after the contract execution date.

(c) It is my understanding and the understanding of the Contractor I represent that if additions are made to the original price of the Contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or non-current wage rates and other factual costs.

11. The contract documents themselves do not describe the contract as being either a cost-plus-fixed-fee contract, or an all-inclusive rate contract.

12. If the contract at issue is a cost-plus-fixed fee contract, Section 13-215 of the Md. State Finance and Procurement Article applies. That statute provides,

13.215.Cost-reimbursement Contracts.

(a) In general.- A unit may not enter into a cost-reimbursement contract unless the procurement officer determines that:

(1) a cost-reimbursement contract is likely to be less costly to the State than any other type of contract; or

(2) except for leases of real property, the kind or quality of procurement that the unit requires could not be obtained practicably under any other type of contract.

(b)Accounting system. - A unit may not enter into a procurement contract that is wholly or partly a cost-reimbursement contract unless the procurement officer determines that the accounting system of the contractor:

(1) will allow timely development of all necessary cost data in the form required by the specific type of procurement contract under consideration; and

(2)is adequate to allocate costs in accordance with generally accepted accounting principles.

(c)Required contract provision.- A cost-reimbursement contract shall provide that costs, including costs for subcontractors, will be reimbursed only if the costs are allowable under:

(1)the procurement contract; or

(2)the regulations of the Board on Cost Principles.

(d)Subcontracting. - A contractor under a cost-reimbursement contract shall give notice to and, as required under the contract, obtain approval from a procurement officer before the contractor enters into:

(1)a cost-reimbursement subcontract; or

(2)any subcontract involving more than:

(I) $25,000; or

(ii) 5% of the estimated cost of the procurement contract.

13. SRA's procurement officer did not make the findings required under Section 13-215, above, that 1) a cost-reimbursement contract is likely to be less costly, 2) that the services required could not be obtained practicably under any other type of contract, or 3) that JRBI's accounting system would allow timely development of all necessary cost data in the form required, or is adequate to allocate costs. Further, the procurement officer did not reduce these findings to writing as required by §21.06.03.03(B)(2), and did not insert the provision in the contract required by §13-215(c), above.

14. After execution of the contract, JRBI began to provide full-time inspection services for the acquisition of the MARC rolling stock, initially matching the double shift work schedule of the Japanese manufacturer. There came a time when the State notified JRBI that it wished to limit the daily inspection services to eight hours and requested that the manufacturer coordinate its activity so as to ensure that critical activities would be performed at a time when the inspector was available. If the inspector was required to work more than 8 hours in a day, the State reserved the right of prior approval of any hours over 8 per day.

15. The project manager for SRA, Mr. George Payne, testified that he worked directly with the principal (Mr. Bell) and the inspectors, observed their work, and was satisfied with the work performed by JRBI. He was responsible for reviewing all of JRBI's invoices and for recommending payment therefor. He never recommended an invoice for payment unless he was satisfied that it fairly represented work that had been performed. His superior, Mr. Joseph Nessel was also responsible for approving invoices for payment, and was satisfied that the invoices he approved were reasonable.

16. During the course of the work, the contract was amended on three occasions to increase the amount of funds available for inspection work because of difficulties experienced in the manufacturing process. In February 1993, invoices were held pending a fourth amendment to the contract, but JRBI, at the State's request, continued work on the assurances that the fourth amendment would be approved. As of that date, JRBI had been paid $1,026,892.

17. At about this time, the MTA succeeded to the SRA's responsibilities pursuant to Chapter 127, Laws of Maryland (1992).

18. A year later in February 1994, the MTA procurement officer requested that JRBI provide necessary documentation (time sheets, etc.) in support of the proposed fourth amendment, including

back-up information for principal and support time. Thereafter, the MTA Audit Manager was requested to conduct a close-out audit on the contract to determine the accuracy of the amounts billed and to see that they were properly supported.

19. The auditor, for the purpose of the audit, assumed that the employees of JRBI worked 40-hour work weeks, and that, based on hourly rates derived from that assumption, JRBI billed $47,078 in direct labor costs in excess of the direct labor costs which it incurred.

20. The auditor further found that two JRBI inspectors worked 1,213 hours in overtime (time beyond 174 hours in any one month) for which the MTA was billed by JRBI, but for which those employees were not paid by JRBI, in the amount of $30,493.

21. The auditor also disallowed (citing lack of documentary support) $25,996 of direct labor costs for Principal (Mr. Bell) and $11,775 for support time (Mr. Bell's office manager).[3] The auditor initially noted, however, that the time should be allowed since the State had not been specific about its record-keeping requirements.

Decision

JRBI appeals from a decision of the procurement officer to accept a close-out auditor's recommendation to disallow $229,378 invoiced for March 1993 through February 1994 which has not been paid. In addition, JRBI opposes the MTA's claim for an additional $49,749 to be reimbursed from funds overpaid to JRBI.

In the Procurement Officer's decision of October 4, 1994, he reports that the Audit Report disclosed that:

> 1. Direct labor rates on invoices were not accurate because they did not represent the actual rates paid by JRBI to JRBI staff but instead reflected average rates stated in the contract for cost estimating purposes.
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> 2. JRBI's invoices to the MTA for 1,213 hours in overtime worked by two employees were improper because the employees were never paid for this overtime work by JRBI.

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[3] These payments were disallowed because of scanty record keeping -- Mr. Bell made notations in his pocket calendar which reminded him of time spent on what meeting or task, and Ms. Frescoia, JRBI's office manager, kept notes on a throw-away desk blotter. At the end of each month, their hours were entered into a computer, and Ms. Frescoia disposed of her notes. Much of the work charged for however, had been reported to SRA's project manager, Mr. George Payne, who, having been present when much of the work was performed, such as on a trip with Mr. Bell to Japan, found the times charged to be reasonable.

3. Hours billed to the MTA for Principal and Support from contract inception through February 28, 1993 were not supported by time records, work logs, or other contemporaneous documentation.

The audit report computed the amounts in dispute as follows. For the discrepancy ($47,078) between the actual rates paid to employees and the "average rates" stated in the contract for cost estimating purposes, multiplied by the markup for overhead (120%) and fixed fee (10%), MTA disallowed $113,929. For overtime charged to MTA but apparently not paid to the employees ($30,493), multiplied by 120% overhead and 10% fixed fee, MTA disallowed $73,793. Finally, for principal and support time charged to MTA but not paid ($37,771), multiplied by 120% overhead and 10% fixed fee, MTA disallowed $91,405. Since the total of the disallowances exceeded JRBI's outstanding invoice, MTA made a claim for the over payment of $49,749.

We examine each of these three areas in turn.

DIRECT LABOR COSTS

JRBI argues that the amounts entered in the Cost and Price Summary provided to JRBI following selection of their technical proposal are negotiated rates of pay for the categories listed. In support of that position, JRBI points out that on three separate occasions in the period prior to the readvertisement of the request for proposals in September 1989, the State indicated orally and in writing that the bidder could choose whether to make its proposal in the form of a cost-plus-fixed fee, or an all-inclusive rate contract. In fact, JRBI notes that SRA indicated a preference for an all-inclusive rate contract. Although the request for proposals was readvertised following these indications, no new pre-proposal meeting was held, and JRBI argues that no notice was given that, as is now argued by the State, SRA was soliciting a cost-plus fixed fee contract. Based on its understanding that the contract was an all-inclusive fee contract, JRBI submitted negotiated "average rates", and seeks to be paid at those negotiated rates.

The State argues, in contrast, that the readvertisement was a clear change to a cost-plus fixed fee contract, and that the contract was approved by the TPSSB and the Board of Public Works as a cost-plus fixed fee contract, and that therefore the State is entitled to pay only the actual direct labor costs. Both views find support in the record herein.

Indications that this is a all-inclusive rate contract include the various representations of the State during the initial procurement:

- that contractors could choose whether to submit their proposals as cost-plus-fixed fee or all-inclusive, and were to use the same cost and price summary for submission of their proposal regardless of which option they chose
- that the State preferred an all-inclusive contract
- that the cost and price summary form originally provided to bidders included the language "all-inclusive"
- that the cost and price summary sheet ultimately provided was essentially identical to the one used initially
- that there was no written or oral indication during the readvertisement period that the contract now sought was a cost-plus-fixed-fee contract
- No pre-contract audit was performed as required by the General Procurement Law, §13-215
- Nowhere in the contract documents, or for that matter, the cost and price summary, do the words "cost-plus-fixed fee" appear.

By contrast, indications that the contract is a cost-plus-fixed fee contract include,

- the Board of Public Works was told and the Notice of Award of contract indicated that this was a cost-plus-fixed fee contract
- the language "all-inclusive" was removed from the final cost and price summary provided to the contractor following readvertisement

Finally, contributing to the ambiguity is the language contained in Step 22 of the A&E Consultant Guidelines "that all prices shall be submitted and evaluated on a cost-plus-fixed fee basis unless otherwise requested by the transportation agency." The Board finds that this language allows either a cost-plus-fixed fee contract, or an all-inclusive rate contract.

Maryland follows the objective law of contracts. *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254 (1985). The Court in *Daniels* observed:

> A court construing an agreement under this test must first determine from the language from the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated. In addition, when the language of the contract is plain and unambiguous there is no room for construction, and a

> court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.

Id. at pp. 261-262. See also, *Metropolitan Life Ins. Co. v. Promenade Towers*, 84 Md. App. 702 (1990). The same rule of construction applies to analysis of bid or proposal documents by bidders or offerors or prospective bidders or offerors. "The primary rule of contract interpretation requires that contract language be given the plain meaning attributable to it by a reasonably intelligent bidder." *Dominion Contractors, Inc.*, MSBCA 1041, 1 MSBCA ¶69 (1984) at p.7 (citing *Kasten Construction Co. v Rod Enterprises, Inc.*, 268 Md. 318 (1973)).

In evaluating what a reasonable person in the position of the Appellant would have thought the language to mean, we look at *Hensel Phelps Construction Co.*, MSBCA 1016, 1 MICPEL ¶44 (1983) at p. 9, where this Board stated that:

> the standard for interpreting a written contract is an objective one. Our task, therefore, is to determine the meaning attributable to the contract language by a reasonably intelligent bidder acquainted with all operative usages and knowing all the circumstances prior to and contemporaneous with the making of the contract. *Fruin-Colnon Corporation and Horn Construction Co., Inc.*, MDOT 1001, Dec. 6, 1979; *Granite Construction Co.*, MDOT 1011, July 29, 1981.

The threshold question to be answered is, therefore, what meaning a reasonable offeror acquainted with all operative usages and knowledgeable of the circumstances would give the request for proposals documents in this case relative to whether the contract was an all-inclusive rate contract or a cost-plus-fixed fee contract. In other words, are the terms of this contract susceptible to more than one reasonable interpretation. The Board finds that it was reasonable for JRBI to believe that this was an all-inclusive rate contract, notwithstanding the State's belief that the contract was a cost-plus-fixed fee contract. The Board also finds that each party was unaware of the belief of the other.

The Board having found there was an ambiguity, it must determine whether that ambiguity was latent (requiring no action by the Appellant) or patent (requiring that the appellant have brought the ambiguity to the attention of the state prior to bid opening so as to recover). A patent ambiguity is glaring and obvious from the face of the document, and exists where there are

obvious discrepancies or conflicting provisions in the contract documents *Concrete General, Inc.*, MSBCA 1062, 1 MSBCA ¶87 (1984). However, contractors are not expected to be clairvoyant. A contractor is obligated to bring to the State's attention major discrepancies or errors which it detects in the specifications or plans, unless it innocently construes in its favor a hidden ambiguity equally susceptible to another construction. See, *Martin G. Imbach, Inc.*, MSBCA 1020, 1 MICPEL ¶53 (1983). Where the ambiguity rests in subtle nuances of language, the ambiguity is considered to be latent.

The State argues that if an ambiguity exists here, the ambiguity is patent because of the use of the word "salary" in the cost and price summary, and therefore the Contractor must have brought the ambiguity to the attention of the State prior to bidding. *Newsom v. United States*, 676 F.2d 647, 649 (Ct.Cl . 1982). Appellant argues that since there is no conflict of provisions in the contract (nowhere do the words "cost-plus-fixed fee" appear to contradict JRBI's understanding of the previously stated State preference for an all-inclusive fee contract), the contract's ambiguity must be latent.

Since the ambiguity here does not arise from an obvious defect, and since nowhere in the contract are either of the contract-defining terms used, the Board finds that the ambiguity is latent. In the Procurement Officer's decision itself, the State unintentionally highlights the latent nature of the ambiguity by describing the auditor's findings as follows: "Direct labor rates on invoices were not accurate because they did not represent the actual rates paid by JRBI to JRBI staff but instead reflected average rates stated in the contract for cost estimating purposes." "Average" is what JRBI appears to have focused on -- hourly figures presented in the cost and price summary were not necessarily actual costs, but the all-inclusive rate it believed it was negotiating with the State -- and at the time of audit, the State understood that reading.

In the face of this only-now apparent ambiguity, the Board must decide whose interpretation shall prevail, and to do so applies the doctrine of *contra proferentum,* that ambiguities in a contract are construed against the drafter. *The Driggs Corporation,* MSBCA 1235, 2 MSBCA ¶141 (1987). As this Board stated in *Colt Insulation Inc.*, MSBCA 1426 and 1446, 2 MSBCA ¶231 at p.10 (1989),

> The rule of *contra proferentum*, which this Board recognizes, is especially applicable to the public contracts where the contractor usually has little to say about their provisions (Citations omitted).

The State apparently insisted that JRBI tailor its proposal to its standard cost and price summary form, which it had made clear could be used for both all-inclusive and cost-plus-fixed fee contracts. When JRBI complied, reasonably assuming that SRA wanted an all-inclusive fee contract because of the SRA's previously stated view that an all-inclusive fee contract was permitted (and, in fact, preferred), as well as Mr. Nessel's statement during price negotiations that he would not pay a "loaded rate" of more than $55 per hour for an inspector, the State cannot now argue that JRBI is at fault. Applying the above legal principal to the appeal at hand, we find that a reasonable contractor would have concluded that it was entering to an all-inclusive rate contract. Therefore, the Board finds that JRBI's reasonable interpretation that the contract was an all-inclusive rate contract should control. JRBI, as a reasonable and experienced contractor, was entitled under the facts of this case to believe, and to rely on its belief, that this was an all-inclusive contract.

With regard to the $113,929 disallowed by the MTA (discrepancy of $47,078 between the actual rates paid to employees and the "average rates" stated in the contract for cost estimating purposes, multiplied by the markup for overhead (120%) and fixed fee (10%)), this Board finds for Appellant.

OVERTIME

The procurement officer adopted the auditor's analysis of "overtime" charged by JRBI to MTA but apparently not paid to the employees ($30,493), multiplied by 120% overhead and 10% fixed fee, and the MTA therefore disallowed $73,793. The Board understands that at issue are hours billed for employees who worked more than 174 hours per month (a figure picked by the auditor) but were not paid overtime by JRBI. In fact, the use of the word overtime is somewhat a misnomer, because it appears that JRBI did not charge the MTA "time and a half" for those hours over 174 per month without paying "time and a half" to its employees. Appellant states that its employees are not paid "time and a half" overtime because they are annual salaried employees. Thus the issue appears to be whether the Appellant is permitted to bill the state for more than 174 hours per month per employee. The Board finds that under this contract, Appellant is permitted to do so.

The State itself was closely involved in the number of hours JRBI employees were permitted to work per month. During the first six months of contract performance, the State's

project manager determined that the time the inspector in Japan was billing was in excess of what had been budgeted, because the Japanese car builder was working double shifts and on the weekends. Mr. Payne asked that the inspector arrange to perform any tests necessary during an eight hour shift, unless the State approved longer hours in specific instances. The State was thereafter consulted when additional hours were needed, and gave its approval that such time be worked on a case-by-case basis. The State thus approved directly hours worked beyond an eight-hour shift, and cannot now be permitted to disallow payment for those hours.

Therefore, this Board finds in favor of Appellant with regard to the $73,793 disallowed by MTA ($30,493 multiplied by 120% overhead and 10% fixed fee).

PRINCIPAL AND SUPPORT TIME

Finally, at issue is principal and support time charged to MTA but not paid ($37,771), multiplied by 120% overhead and 10% fixed fee. For this category, MTA disallowed $91,405. This time covers work performed by the JRBI principal/project manager (Mr. Jackson Bell, President) supervising the performance of JRBI under the contract, as well as time billed for work performed by office support staff.

The State objects to payment of any of the hours billed in this category, arguing that lax record-keeping prevents the State from confirming that the hours were in fact worked. Apparently Mr. Bell kept notes to (and decipherable only by) himself in a pocket notebook which highlighted meetings, longer telephone calls, etc. He would report these hours on a monthly basis to his assistant who would enter the hours in the office computer. These bills would be sent with accompanying documentation of any travel expenses charged. With regard to her hours, the assistant would keep penciled handwritten notations on a desk blotter and after reviewing her correspondence file, she would enter her hours into the computer, and discard the desk blotter page.

The Board finds that despite the sparse record keeping, these hours were worked and should be paid under the contract for the following reasons.

First, Mr. George Payne, MTA's project manager testified that he in many cases was present with Mr. Bell, both here and in Japan during hours that were billed by Mr. Bell. He testified that he found the hours billed to be consistent with the work he was aware was being performed. He reviewed the invoices submitted, found them to be reasonable, and forwarded them with his recommendation that they be paid.

Second, the State, as noted above, failed to perform a pre-award audit as required by the cost-plus-fixed fee contract provisions of the General Procurement Law. As stated in §13-215(b), a unit may not enter into such a contract unless the procurement officer determines that the accounting system of the contractor "will allow timely development of all necessary cost data in the form required by the specific type of contract" under consideration. If this pre-award audit had been performed, JRBI could have been told what specific record keeping would be required for payment of principal and support time.

Third, after a few months of billing on the Contract, JRBI was informed by the procurement officer that too much detail was being provided, and that a summary was sufficient.

Finally, the close-out auditor recommended the following:

> Based on the correspondence and reports and financial information produced by these 2 individuals, the billing of 15 and 20 hours per month appears reasonable. Mr. Bell was "on the job" in Japan. Based on these findings, I conclude that we should not take exception to this lack of support for these hours charged.
>
> If the MTA contracts with JR Bell in the future, we should be specific as to what we require of a contractor re' accounting records and support.

For these reasons, the Board finds in favor of the Appellant with regard to the $91,405 for principal and support time disallowed by the MTA and not paid ($37,771, multiplied by 120% overhead and 10% fixed fee).

Pre-decision Interest

Appellant requests that it be awarded pre-decision interest pursuant to §15-222 of the General Procurement Law. The Board by this statute is authorized to award interest at the rate set forth by the Courts Article (ten percent). After totaling the amounts awarded, supra, minus the amount which MTA paid but later disallowed, $49,749, the final judgment total is $229,378.00. JRBI claims interest of $23,817.60 based on the date it filed its claim with the procurement officer through the date of the filing of its post-hearing brief, the period of interest claimed totaling 379 days. The Board finds that Appellant performed satisfactorily on this contract and did the work for which it seeks compensation. Its belief that it was entitled to such compensation is reasonable. While we recognize that pre-decision interest cannot accrue until a claim is filed, we also note that

at one point in time Appellant was led to believe that it would be compensated and continued to work without compensation for many months.

Wherefore, it is ORDERED this 26th day of March, 1996, that the appeal is granted, and that Appellant shall be paid $229,378.00 plus $23,827.60 pre-decision interest.

Dated: March 26, 1996

Candida S. Steel
Board Member

I concur:

Robert B. Harrison III
Chairman

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

(1) the date of the order or action of which review is sought;
(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
(3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 1851, appeal of Jackson R. Bell Inc. under MTA Contract No. SRA 4999-252.

Dated: March 26, 1996

Mary F. Priscilla
Recorder