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Case No. 68

Date of filing: 29.Sep86

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 - Date of Award _____
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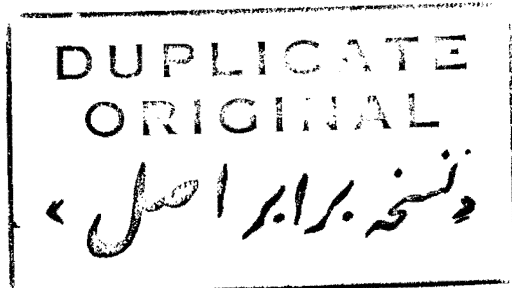
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** SEPARATE OPINION of _____
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** DISSENTING OPINION of _____
 - Date _____
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** OTHER; Nature of document: Correction to Award

 - Date 29 Sep 86
7 pages in English _____ pages in Farsi



CASE NO. 68

239

CHAMBER TWO

AWARD NO. 244-68-2

HOWARD NEEDLES TAMMEN & BERGENDOFF,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN, MINISTRY OF ROADS
AND TRANSPORTATION, AND BANK
TEJARAT (successor to International
Bank of Iran and Japan),

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعای ایران - ایالات متحدہ
ثبت شد - FILED	
Date	29 SEP 1986 تاریخ
	۱۳۶۵ / ۷ / ۷
No.	68 شماره

CORRECTION TO AWARD

On 9 September 1986, the Respondent Ministry of Roads and Transportation submitted to the Tribunal a request, pursuant to Article 36 of the Tribunal Rules of Procedure, that two errors contained in Award No. 244-68-2 be corrected. The Tribunal notes that the Respondent's request was filed within thirty days of its receipt of Award No. 244-68-2, as required by Article 36, paragraph 1, of the Tribunal Rules.

On 16 September 1986, the Tribunal received a telex from the Claimant concurring in the requested corrections.

The two errors in question are:

(a) The amount stated in paragraph 102 of the Award regarding the adjustment to Invoice No. 45 was 944,391 rials and should have been 994,391 rials; and

(b) The amount stated in several paragraphs of the Award as the good performance retention was 66,946,753 rials and should have been 21,000,000 rials less (that is, 45,946,753 rials) because of the prior release of 21,000,000 rials in exchange for a letter of guarantee.

Having considered the request of the Respondent and the Claimant's concurrence therewith, and having reviewed the Award, the Tribunal determines that the requested corrections concern two errors within the scope of Article 36, paragraph 1, of the Tribunal Rules. The correction of these two errors affects a number of figures used in the computation of the awarded amounts. Accordingly, the Tribunal adopts the following corrections to its Award No. 244-68-2:

1. Paragraph 102

(a) In the ninth line of paragraph 102, the number "177,948,381 rials" is replaced by "177,898,381 rials".

(b) The sixth line of the table contained in paragraph 102 is replaced by:

"Less Invoice No. 45 adjustment (994,391) "

(c) The last line of the table contained in paragraph 102 is replaced by:

"Total net amount 177,898,381 rials"

2. Paragraph 116

In the second line of paragraph 116, the number "66,946,753 rials" is replaced by "the balance of 45,946,753 rials".

3. Paragraph 117

In the last line of paragraph 117, the number "66,946,753 rials" is replaced by "45,946,753 rials".

4. Paragraph 140

(a) The first line of the table contained in paragraph 140 is replaced by:

"Invoiced amounts	177,898,381	2,524,276.42"
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(b) The third line of the table contained in paragraph 140 is replaced by:

"Good performance retention	45,946,753	651,958.18"
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(c) The fourth line of the table contained in paragraph 140 is replaced by:

"Totals	231,624,534	\$3,274,340.43"
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(d) In the last line of paragraph 140, the number "\$3,710,646.35" is replaced by "\$3,411,958.87".

5. Paragraph 141

In the last line of paragraph 141, the number "\$2,226,387.81" is replaced by "\$2,047,175.32".

6. Paragraph 149

(a) In the tenth line of paragraph 149, the number "\$1,514,991.53" is replaced by "\$1,514,565.85".

(b) In the eleventh line of paragraph 149, the number "\$1,623,698.30" is replaced by "\$1,623,272.62".

7. Paragraph 150

(a) In subparagraph 150(a)(1), the phrase "One Million Six Hundred Twenty-Three Thousand Six Hundred Ninety-Eight United States Dollars and Thirty Cents (U.S. \$1,623,698.30)" is replaced by the phrase "One Million Six Hundred Twenty-Three Thousand Two Hundred Seventy-Two United States Dollars and Sixty-Two Cents (U.S. \$1,623,272.62)".

(b) In subparagraph 150(a)(3), the phrase "Five Hundred Sixty-Nine Thousand Nine Hundred Sixty-One United States Dollars and Seventy-One Cents (U.S. \$569,961.71)" is replaced by the phrase "Three Hundred Ninety-One Thousand One Hundred Seventy-Four United States Dollars and Ninety-One Cents (U.S. \$391,174.91)".

Since the corrections to the computations affect the amounts indicated in the dispositif of the original award, the complete corrected text of paragraph 150 of Award No. 244-68-2 is reprinted here in order to facilitate notification to the Escrow Agent of the corrected award amounts:

"150. For the foregoing reasons,

THE TRIBUNAL HEREBY AWARDS AS FOLLOWS:

(a) The Respondent, THE MINISTRY OF ROADS AND TRANSPORTATION OF THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, HOWARD NEEDLES TAMMEN & BERGENDOFF,

(1) the sum of One Million Six Hundred Twenty-Three Thousand Two Hundred Seventy-Two United States Dollars and Sixty-Two Cents (U.S. \$1,623,272.62), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 1 May 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, for its invoice claims;

(2) the sum of Fifty-Eight Thousand Eight Hundred Sixty-Three United States Dollars and Eleven Cents (U.S. \$58,863.11), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 16 December 1981 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, for its uninvoiced claims;

(3) the sum of Three Hundred Ninety-One Thousand One Hundred Seventy-Four United States Dollars and Ninety-One Cents (U.S. \$391,174.91), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 18 March 1980 up to and including

the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, for its good performance guarantee claim;

(4) the sum of Eighty-Two Thousand Five Hundred Seventy-One United States Dollars and Six Cents (U.S. \$82,571.06), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 20 October 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, for its demobilization claims.

(b) These obligations shall be satisfied by payment out of the Security Account established pursuant to Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

(c) The Counterclaim of BANK TEJARAT is dismissed for lack of jurisdiction.


(d) The Counterclaims for the seven Consortium-related letters of guarantee and for taxes and social insurance premiums of the MINISTRY OF ROADS AND TRANSPORTATION are dismissed for lack of jurisdiction.

(e) The remaining claims and counterclaims are dismissed on the merits.

(f) This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent."


Copies of the pages affected by these corrections,
containing the corrected text, are attached for convenience.

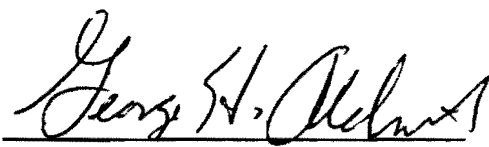
Dated, The Hague
29 September 1986



Robert Briner
Chairman

In the name of God,



Hamid Bahrami-Ahmadi

George H. Aldrich

unsubstantiated portion of the Map Invoice, and the 5.5 percent withholding for taxes. The Tribunal is satisfied that the invoiced amounts reflect services performed under the Contract. The Tribunal notes, moreover, that of this amount, MORT actually approved and authorized for payment, but did not pay, gross amounts totalling 159,802,022 rials.

102. Nonetheless, the amount claimed is overstated because the Claimant deducts 5.5 percent for taxes not from the gross amounts invoiced, as was the Parties' practice, but from invoiced amounts net of the advance payment liquidation and the adjustment for Invoice No. 45. Under the Claimant's approach, it would escape tax on services performed to the extent of the unliquidated advance payment and other adjustment. The correct arithmetic indicates that MORT is liable to HNTB-Iran for 177,898,381 rials, computed as follows:

Total gross amount claimed	253,444,762 rials
<u>Less Map Invoice Adjustment</u>	<u>579,478</u>
Total adjusted gross amount	252,865,284
Less 5.5% for taxes	(13,907,590)
Less unliquidated advance	(60,064,922)
<u>Less Invoice No. 45 adjustment</u>	<u>(994,391)</u>
Total net amount	177,898,381 rials

103. MORT's allegations of defective performance on the part of the Claimant are addressed in connection with the Counterclaims below.

b. Uninvoiced Amounts

104. The second element of the claim for services rendered under the Contract concerns uninvoiced fees. In

115. In sum, the Tribunal finds HNTB-Iran entitled to 7,779,400 rials in respect of uninvoiced high supervision fees. This amount must be reduced by 5.5 percent for taxes, leaving a balance owed of 7,351,533 rials.

(3) Conclusion

In conclusion, the Tribunal holds MORT liable for the uninvoiced high supervision fee differential on the 10 invoices covering the period 22 May 1979 to 20 March 1980 for the services of Mr. Amini in Tehran. The other uninvoiced claim amounts are denied.

2. Good Performance Guarantee

116. The Claimant's second claim seeks restitution of the balance of 45,946,753 rials in good performance retentions withheld by MORT pursuant to Article 14(1) of the Contract. The amount withheld is not in dispute. MORT objects to any reimbursement of good performance retentions, contending HNTB-Iran's performance was defective.

117. Having examined the evidence before it, the Tribunal finds that the Claimant satisfied its obligation of good performance, as defined by the Contract's performance standards. MORT's allegations to the contrary are not supported by evidence, as is more fully discussed in section B.2 below, concerning the Counterclaim for defective performance. Accordingly, the Claimant is entitled to a refund of amounts retained to secure its good performance. The Tribunal upholds this aspect of the claim in the amount of 45,946,753 rials.

3. Reimbursement of Facilities Expenditures

118. The Claimant's third claim under the Contract is for restitution of amounts spent to provide facilities for

6. Summary

140. In summary, the Tribunal has held MORT liable to HNTB-Iran for the following amounts, as converted into U.S. dollars:

	<u>Rials</u>	<u>Dollars</u>
Invoiced amounts	177,898,381	\$2,524,276.42
Uninvoiced amounts	7,779,400	98,105.83
<u>Good performance retention</u>	<u>45,946,753</u>	<u>651,958.18</u>
Totals	231,624,534	\$3,274,340.43

To this converted amount must be added \$137,618.44 awarded for demobilization expenses, yielding a total of \$3,411,958.87.

141. As held above, the Claimant is entitled to recover 60 percent of this total. Accordingly, the Tribunal awards the Claimant the sum of U.S. \$2,047,175.32.

B. The Counterclaims

1. Counterclaims Relating to Bank Guarantees

142. MORT's first counterclaim relates to two letters of guarantee issued by the International Bank to secure advance payments and repayment of good performance retentions and allowed to expire in accordance with their terms.

143. The Tribunal finds the counterclaim to be without merit. Even assuming that HNTB-Iran is somehow liable for Bank Tejarat's failure to extend or to pay on the

claims, commencing 30 days after each invoice was received by MORT.

149. The Claimant has computed the amount of interest accrued starting 40 days from the date of each invoice -- allowing 10 days for each invoice to be received by MORT -- through to 30 April 1980 at 6 percent, and MORT has not challenged this computation. The Tribunal therefore awards interest of \$108,706.77, representing 60 percent of the Claimant's calculated amount as adjusted by the Tribunal to reflect the proper amount of interest on the net amount awarded on the Map Invoice, as a fixed sum through 30 April 1980, to be added to the \$1,514,565.85 awarded on the Claimant's invoice claims. The resulting base amount of \$1,623,272.62, including interest up to 30 April 1980, is to be used to calculate the additional interest owing up to the date of the Award. With respect to the claim for the uninvoiced high supervision fees for which the Tribunal has found MORT to be liable, the Tribunal awards the contractually-mandated 6 percent simple interest as of 16 December 1981, 30 days after the date on which the Claimant filed its claim here. As to interest on the good performance retention, the Tribunal notes that reimbursement of the good performance retention was provided for in a separate contractual provision not linked to Article 12 and its interest provisions. Nevertheless, the Tribunal determines that the Contract rate of interest should be applied to the good performance retention as well. The Tribunal therefore awards simple interest of 6 percent per annum as of 18 March 1980, the date on which the Tribunal finds the retention should have been refunded to the Claimant. Likewise, 6 percent interest on the allowable demobilization costs is also awarded, but from 20 October 1980, 30 days after the Claimant states it completed all demobilization activities.

VI. COSTS

Each Party shall bear its own costs of arbitration.

VII. AWARD

150. For the foregoing reasons,

THE TRIBUNAL HEREBY AWARDS AS FOLLOWS:

(a) The Respondent, THE MINISTRY OF ROADS AND TRANSPORTATION OF THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, HOWARD NEEDLES TAMMEN & BERGENDOFF,

(1) the sum of One Million Six Hundred Twenty-Three Thousand Two Hundred Seventy-Two United States Dollars and Sixty-Two Cents (U.S. \$1,623,272.62), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 1 May 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, for its invoice claims;

(2) the sum of Fifty-Eight Thousand Eight Hundred Sixty-Three United States Dollars and Eleven Cents (U.S. \$58,863.11), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 16 December 1981 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, for its uninvoiced claims;

(3) the sum of Three Hundred Ninety-One Thousand One Hundred Seventy-Four United States Dollars and Ninety-One Cents (U.S. \$391,174.91), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 18 March 1980 up to and including the date on which the