

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Speegle Construction, Inc.) ASBCA No. 54236
)
Under Contract No. DACA01-01-C-0012)

APPEARANCE FOR THE APPELLANT: C. Frederick Robinson, Esq.
General Counsel

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.
Engineer Chief Trial Attorney
Joseph A. Gonzales, Esq.
District Counsel
Stephen L. Sowell, Esq.
Assistant District Counsel
U.S. Army Engineer District, Mobile

OPINION BY ADMINISTRATIVE JUDGE TODD

This appeal was taken from a contracting officer's decision denying appellant's claim for reimbursement of the additional costs of installation of a fire protection system. At issue is a question of contract interpretation of amended specifications for an attic sprinkler system. Both parties have submitted the appeal for decision under Rule 11. Only entitlement is before us for decision.

FINDINGS OF FACT

1. On 30 March 2001, the U.S. Army Corps of Engineers (USACE), Mobile District, Mobile, Alabama, awarded Contract No. DACA01-01-C-0012 to Speegle Construction, Inc. (Speegle) for design and construction to upgrade dormitory 19, Wing D at Eglin Air Force Base, Florida (R4, tab 12).

2. Section 01010 of Solicitation DACA01-01-R-0004 for the contract (the RFP), "Design Requirements," required the contractor to prepare complete construction documents for all work designed as required by the RFP (*id.*, § 01010, ¶ 5.1.3). Paragraph 12.3, "Conflicts in Criteria," provided in pertinent part:

Various codes or code requirements are cited throughout this RFP. . . . When codes are in conflict, the most stringent shall apply.

(*Id.*, ¶ 12.3) Section 01010 also included Section 16, “Fire Protection and Life Safety Design Criteria,” which provided in paragraph 16.1, “Codes, Standards, Regulations and Recommended Practices,” that the National Fire Protection Association (NFPA) Codes and Standards and the Uniform Building Code (UBC) govern design, construction and installation of all fire protection and life safety systems, unless otherwise specified in the solicitation (*id.*, ¶ 16.1).

3. Paragraph 16.2.1 required that the dormitory facility and attic spaces be fully protected by an automatic sprinkler system and specifically stated: “All systems are to be designed in accordance with NFPA 13 and NFPA 13R” (*id.*, ¶ 16.2.1).

4. Paragraph 16.2.13 provided that “[D]ormitory room facilities and attics shall be fully sprinkled with a wet pipe system in accordance with NFPA 13R” and stated that “The attic sprinkler system shall be freeze protected” (*id.*, ¶ 16.2.13).

5. On 10 January 2001, the government issued Amendment 3 to the solicitation. The amendment specified that deletions from the specifications were indicated by strikethrough and additions to the specifications, including revisions or substitutions, were indicated in bold italic type that was underlined. Amendment 3 changed paragraph 16.2.13 to provide that “The facility shall be fully sprinkled with a wet pipe system in accordance with NFPA 13R [T]he attic shall be fully sprinkled with a dry pipe system with upright heads designed in accordance with MIL-HDBK-1008C.” (R4, tab 8) The amendment thus specified two separate sprinkler systems and how they were to be designed. According to the contracting officer:

Paragraph 16.2.13 had the first sentence revised to indicate the facility shall be fully sprinkled with a wet pipe system in accordance with NFPA 13R and deleted the requirement for freeze protection. The Amendment also added the new sentence that the attic shall be fully sprinkled with a dry pipe system in accordance with MIL-HDBK-1008C.

(R4, tab 20 at 1)

6. On 21 February 2001, the government issued Amendment 4 to the solicitation. This amendment also described deletions and additions to the specifications by the same provision contained in Amendment 3. Amendment 4 included paragraph 16.2.1 in the amendment with the following addition: “[A]ll new standpipes shall also extend into the attic to serve attic spaces.” (R4, tab 9)

7. On 21 February 2001, appellant sent L. Pugh & Associates (Pugh), a fire protection systems contractor, Amendment 4 with a request for new pricing information (R4, tab 27). Appellant noted that there was a change in the “scope of the original requirements” of the solicitation (*id.* at 1).

8. On 23 February 2001, Pugh told appellant that Amendment 4 did not impact its proposal. Pugh understood from the solicitation that the standpipes for the existing building extended into the attic and assumed that the standpipes for Wing D would also be required to be extended into the attic. (R4, tab 28) On 6 March 2001, appellant submitted a final proposal to the government naming Pugh as the proposed fire protection systems installation subcontractor (R4, tabs 11, 12).

9. Appellant obtained a quotation from Hiller Systems, Inc. (Hiller) for the attic fire protection system as sprinkler piping in a single line running down the center of the attics in the shape of an H in accordance with NFPA 13 and 13R (R4, tab 18). Hiller’s quote was consistent with standard industry practice: a sprinkler system is not designed to a higher level of protection (such as MIL-HDBK-1008C) in an area above the primary space, *i.e.* the dormitory rooms, which is to be protected by the fire suppression system (Aff. of Thomas J. Leach). The MIL-HDBK-1008C piping system has three lines running parallel to each other or roughly three times more pipe than Hiller originally estimated. Hiller installed the system in accordance with MIL-HDBK-1008C, as required by the contracting officer. The MIL-HDBK-1008C requirements are stricter than the NFPA codes. (R4, tab 18)

10. On 13 August 2002, Hiller submitted a request for equitable adjustment (REA) addressed to the government to appellant. Hiller requested compensation for \$77,522 which it stated was the cost difference between the NFPA system it quoted and the MIL-HDBK-1008C system it was required to install. (*Id.*)

11. On 28 August 2002, appellant submitted the REA on behalf of Hiller to the government requesting issuance of a modification for additional costs of \$94,708 incurred in performance of the attic fire protection work in accordance with MIL-HDK-1008C (R4, tab 19). By letter dated 9 October 2002, the contracting officer stated his position that the REA was without merit (R4, tab 20).

12. By letter dated 1 November 2002, Hiller formally requested a contracting officer’s final decision. On 7 November 2002, appellant forwarded the request to the government. (R4, tabs 21, 22)

13. On 8 April 2003, the contracting officer issued a final decision denying appellant’s claim on the grounds that appellant’s interpretation of the solicitation amendments was not reasonable and if there were a conflict, the alleged contradiction

was not latent and appellant was obliged to inquire about the requirements before bidding, which it did not do (R4, tab 4). Appellant filed this timely appeal.

DECISION

Appellant argues that the only reasonable interpretation of the contract specifications was that the NFPA 13 and 13R standards were to be used throughout the fire protection system (app. br. at 2). Appellant maintains that the language of Amendment 4 read like the original specifications and superseded the MIL-HDBK-1008C requirement for the attic in Amendment 3. Appellant submits that it is entitled to an equitable adjustment for the government's direction to install the attic fire protection system in accordance with MIL-HDBK-1008C instead of the NFPA design criteria.

The government maintains that the only reasonable interpretation of the specifications was that the fire protection system in the attic was to be installed in accordance with MIL-HDBK-1008C. According to the government, Amendment 4 added a new requirement to paragraph 16.2.1 but had nothing to do with fire protection system codes. The government argues that if Amendment 4 superseded Amendment 3 because Amendment 3 did not strike through and delete the NFPA 13 and 13R language, the MIL-HDBK-1008C language in Amendment 3 survived Amendment 4 because Amendment 4 did not strike through that language to delete it. The government argues that under appellant's proposed interpretation, the provisions are not read as a whole and the MIL-HDBK-1008C language in Amendment 3 is rendered meaningless. The government maintains that appellant's interpretation does not construe the provisions in a manner that is without conflict or in accordance with the requirements of other provisions in the specifications and is, therefore, unreasonable. The government interprets the amendments to require the facility to be designed in accordance with the NFPA code and the attic spaces according to MIL-HDBK-1008C. If deemed in conflict, the government notes that the contractor was required to apply the more stringent provisions. If appellant's interpretation was found reasonable, the government argues that the obvious contradiction was never brought to the attention of the contracting officer before award and the claim is without merit for this further reason.

In interpreting a contract, the preferred interpretation is one which views the contract as a whole, leaves no portion of the contract meaningless and construes its provisions in a manner in which they do not conflict. Thus the language of a particular contractual provision is to be read in the context of the entire agreement. *United States v. Johnson Controls, Inc.*, 713 F.2d 1541, 1555 (Fed. Cir. 1983); *Metric Constructors, Inc.*, ASBCA No. 49343, 97-2 BCA ¶ 29,076.

Applying these principles, we conclude that the amended specifications called for the fire protection system in the attic to be designed in accordance with MIL-HDBK-

1008C. The only reasonable interpretation of Amendment 4 was that it did not change the provisions of Amendment 3 because it did not concern the provisions therein, and it did not delete its provisions by strikethrough. Appellant's interpretation that the final amendment read together with the original specifications required the fire protection system in the attic spaces to be designed in accordance with the NFPA codes is improperly based on reading Amendment 4 out of context. It would render provisions in conflict and, as appellant understood it, disregard the MIL-HDBK-1008C requirement in Amendment 3. An interpretation that writes out of the specifications clear provisions to the contrary cannot be accepted as reasonable. *Metric Constructors, Inc., supra; Massee Builders, Inc.*, ASBCA No. 40102, 90-3 BCA ¶ 23,195.

Moreover, to the extent paragraph 16.2.13 as amended by Amendment 3 was inconsistent with paragraph 16.2.1, there was a patent ambiguity in the solicitation as to whether NFPA 13R or MIL-HDBK-1008C governed the attic sprinkler system. Since appellant made no inquiry to resolve the ambiguity before submitting its bid, the ambiguity will be resolved against appellant. *See Triax Pacific, Inc., v West*, 130 F.3d 1469, 1474-75 (Fed. Cir. 1997).

Appellant's position that its interpretation was consistent with standard industry practice is to no avail (finding 9). The government has the right to insist on adherence to the contract specifications. *A & B Electric*, ASBCA No. 28371, 85-3 BCA ¶ 18,229; *Gramercy Machine Corp. v. United States*, 223 Ct. Cl. 656 (1980). Appellant's interpretation was unreasonable, and its claim is without merit.

The appeal is denied.

Dated: 26 January 2005

LISA ANDERSON TODD
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

MONROE E. FREEMAN, JR.
Administrative Judge
Acting Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 54236, Appeal of Speegle Construction, Inc., rendered in conformance with the Board's Charter.

Dated:

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