

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Computer Sciences Corporation) ASBCA No. 56167
)
Under Contract No. DAAB07-00-D-E252)

APPEARANCES FOR THE APPELLANT:

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APPEARANCES FOR THE GOVERNMENT:

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Army Chief Trial Attorney
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OPINION BY ADMINISTRATIVE JUDGE PARK-CONROY
ON APPELLANT'S MOTION FOR SUMMARY JUDGMENT

This is one of 15 consolidated appeals docketed as ASBCA Nos. 56162-56176. Appellant Computer Sciences Corporation (CSC) has moved for summary judgment with respect to entitlement. The Army has conceded entitlement. We, therefore, grant the motion.

FINDINGS OF FACT FOR PURPOSES OF THE MOTION

Contract No. DAAB07-00-D-E252 was awarded to CSC on 29 December 1999 for the Army's Wholesale Logistics Modernization Program (LMP) (R4, tabs 12 to 25).

As originally awarded, the LMP contract did not contain any requirement for CSC to provide Single Stock Fund Milestone 3 (SSF MS3) functionality or sustainment (CSC statement of undisputed material facts (CSC SOF) ¶ 4 and gov't resp.). After contract award, at the Army's request, CSC developed and submitted a series of technical and cost proposals for SSF MS3 functionality and sustainment (CSC SOF ¶ 5 and gov't resp.).

In February 2002, at the Army's request, CSC divided its initial proposal into two separate proposals, one for SSF MS3 functionality and another for SSF MS3 sustainment (CSC SOF ¶ 6 and gov't resp.). In May 2002, the Army issued to CSC a task order for development of the SSF MS3 functionality that did not include SSF MS3 modernization

sustainment services (CSC SOF ¶ 7 and gov't resp.). The Army has paid CSC for the SSF MS3 development effort (CSC SOF ¶ 9 and gov't resp.).

CSC provided the sustainment services that are at issue in this appeal beginning on 7 July 2003, when the SSF MS3 functionality was first implemented and continuing through 1 April 2005 (CSC SOF ¶ 10 and gov't resp.). The Army has taken no final action on CSC's cost proposals for the SSF MS3 modernization sustainment effort (CSC SOF ¶ 9 and gov't resp.).

On 17 January 2006, CSC submitted 12 Requests for Equitable Adjustment (REAs) to the contracting officer. REA 6 sought \$25,877,503 for providing SSF MS3 sustainment services. CSC certified the REAs, including REA 6, as claims under the Contract Disputes Act (CDA) on 14 July 2006. REA/Claim 6 was denied by the contracting officer in a final decision dated 14 June 2007. (R4, tab 647 at 12800-02)

This timely appeal followed and Claim 6 was docketed as ASBCA No. 56167. CSC's Second Amended complaint reduced the amount claimed to \$5,783,588 (2nd amend. compl. ¶ 194).

In response to CSC's First Set of Interrogatories on Count 6, ASBCA No. 56167, the Army stated:

The Government objects to all of the Count 6 Interrogatories because *the Government does not dispute entitlement to Count 6*. Since the Board previously has determined that the hearings in these appeals will be limited to matters of entitlement only and quantum is not being decided, the Government will not respond to Appellant's Count 6 Interrogatories.

(Gov't resp. at 1, 2) (Emphasis in original)

The Army's response to CSC's motion sought a stay pending the Board's decision on its motion to dismiss ASBCA No. 56167 without prejudice for failure to state a sum certain. The Army's motion to dismiss was denied on 21 September 2010. By a letter dated 8 October 2010, the Army advised the Board that: "The Army will not file a substantive response to CSC's motion for summary judgment on claim 6."

DISCUSSION

Summary judgment is appropriate where there are no genuine issues of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987).

Here, the Army has conceded that, at the Army's request, CSC developed SSF MS3 functionality and implemented sustainment services from 7 July 2003 through 1 April 2005. It has further conceded that CSC has not been paid for the SSF MS3 sustainment services it provided. In response to CSC's First Set of Interrogatories on Count 6, the Army conceded that it does not dispute CSC's entitlement on Count 6, ASBCA No. 56167.

Accordingly, there are no genuine issues of material fact in dispute and judgment should be granted on entitlement as a matter of law.

CONCLUSION

CSC's motion for summary judgment on entitlement on Count 6, ASBCA No. 56167, is granted. The appeal is sustained. The matter is returned to the parties for negotiation of quantum.

Dated: 21 October 2010

CAROL N. PARK-CONROY
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

EUNICE W. THOMAS
Administrative Judge
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. 56167, Appeal of Computer Sciences Corporation, rendered in conformance with the Board's Charter.

Dated:

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