

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
Red Sea Engineers & Constructors, Inc.) ASBCA Nos. 57448, 57589, 57590
) 57591, 57592, 57593
Under Contract No. W91B4M-09-C-7340)

APPEARANCES FOR THE APPELLANT:

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Army Chief Trial Attorney
MAJ Joon K. Hong, JA
MAJ Samuel E. Gregory, JA
MAJ K.L. Grace Moseley, JA
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE FREEMAN ON
APPELLANT'S MOTION FOR RECONSIDERATION

Red Sea Engineers & Constructors, Inc. (Red Sea) moves for reconsideration of our 21 February 2013 decision in these appeals to correct two alleged computation errors in the findings that affect the quantum due appellant under the decision. *Red Sea Engineers & Constructors, Inc.*, ASBCA No. 57448 *et al.*, 2013 ASBCA LEXIS 14.

The first alleged error is the computation of the total contract value of the Phase 1 building construction CLINs in finding 7. We computed that value from the original Phase 1 building construction CLIN prices (\$3,501,906.54) in the contract schedule (R4, tab 1 at 3-7, 22-23), plus the increased price adjustments to those CLINs (\$572,416.93) in Modification No. P00002 (R4, tab 16 at 2), for a total contract value of \$4,074,323.47. Appellant's computed total contract value includes an additional \$177,415.36 for the Modification No. P00002 price increases for CLINs 0009, 0010 and 0013 and an additional \$107,277 for the Defense Base Act (DBA) insurance CLINs (0038AA-0038 AH, 0038BK-0038BM) applicable to the Phase 1 building construction CLINs (mot. at 2). CLINs 0009, 0010 and 0013 were building construction CLINs that were not part of the Phase 1 work, and the DBA insurance CLINs applicable to the Phase 1 building construction CLINs were separately priced items of work and not part of the related

building construction CLIN contract values. Accordingly, we find no error in the total contract value of the Phase 1 building construction CLINs as found in finding 7. However, if Red Sea did in fact procure the DBA insurance for the Phase 1 building construction CLINs, it is entitled to recover the DBA insurance CLIN prices for those items. The record is not clear on this point and we remand the DBA insurance issue to the contracting officer for determination.

The second alleged error is our computation of a 73 percent average earned value of the Phase 1 building construction CLINs at termination in finding 23. Appellant correctly states that their average earned value was 74.6 percent in the estimates made by the Engineer Battalion cited in the finding (R4, tabs 174, 175).¹ However, the government points out that the records of the project manager for the completion effort indicate an earned value at termination of no more than 72.4 percent.² The difference between the two estimates is attributed to missing materials and the defective work by Red Sea that had to be redone and had not been considered in the Engineer Battalion estimate. (Tr. 2/276-92; R4, tab 276)

On reconsideration of finding 23, we revise that finding to read as follows:

23. On 30 September 2010, an Army Engineer Battalion estimated that the average percentage of completion of the Phase 1 building construction CLINs at termination was 74.6 percent (R4, tabs 174, 175). However, the records of the project manager for the completion effort indicate an average percentage completion at termination of no more than 72.4 percent. The difference between the two estimates is attributed to missing materials and the extent of defective work in place by Red Sea that was not considered in the Engineer Battalion estimate. (Tr. 2/276-92; R4, tab 276) On this evidence, we find in the nature of a jury verdict, that the average percentage completion of the Phase 1 building construction CLINs at termination of Red Sea's contract was 73.5 percent. That percentage of completion equals a total earned value for the Phase 1 building construction CLINs at termination of \$2,994,627.75.³

¹ The individual building percentages of completion at Red Sea's termination in the Engineer Battalion estimate were as follows: 90, 81, 81, 76, 76, 55, 66, 88, 74, and 59 (R4, tab 174 at 1, tab 175 at 1).

² The individual building percentages of completion at Red Sea's termination indicated in the completion project manager's report were as follows: 86, 76, 74, 72, 73, 63, 69, 65, 71, and 75 (R4, tab 276 at 1).

³ $\$4,074,323.47 \times .735 = \$2,994,627.75$

Appellant's motion for reconsideration is allowed as to finding 23 to the extent indicated above, and the issue of compensation for the DBA insurance CLINs is remanded for determination by the contracting officer as part of the determination of quantum. The motion is in all other respects denied.

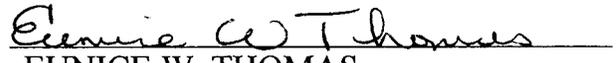
Dated: 22 April 2013


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

I concur


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

I concur


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 Nos. 57448, 57589, 57590, 57591, 57592, and 57593, Appeals of Red Sea Engineers & Constructors, Inc., rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals