

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Monterey Mechanical Co.) ASBCA No. 51450
)
Under Contract No. F64133-94-C0004)

APPEARANCES FOR THE APPELLANT: Paul A. Aherne, Esq.
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APPEARANCES FOR THE GOVERNMENT: COL Alexander W. Purdue, USAF
Chief Trial Attorney
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OPINION BY ADMINISTRATIVE JUDGE JAMES
ON APPELLANT'S MOTION FOR RECONSIDERATION

On 11 April 2001 the Board issued its decision on entitlement only in the captioned appeal. On 10 May 2001 appellant timely moved for reconsideration or clarification of our decision for purposes of resolving quantum. On 31 May 2001 respondent replied to the motion.

Appellant seeks clarification that where we found 40 differing site conditions in finding 47, the costs of such conditions are not to be deemed barred because appellant included their costs under a different "impact" from those enumerated in finding 47. In the example appellant mentions, we found that impact 126 was a differing site condition because MMC encountered subsurface concrete beneath asphalt surface pavement. We found that impact 238 was not a differing site condition because MMC encountered concrete slabs visible at surface elevation, or at least there was no credible evidence that such slabs were not visible (finding 43). Respondent states that appellant can provide quantum information due for each impact on which we found entitlement "gathered from whatever source deemed appropriate." We perceive no further need for clarification.

Appellant requests us to clarify that our decision "was not intended . . . to deny recovery for liquidated damages that should be released under the days of compensable or excusable delays recognized in the decision." Respondent replies that though the Board found appellant entitled to 33.3 days of delay not previously extended in contract modifications (finding 75), "none of these remaining 420 days of delays charged to Appellant have been demonstrated to have been unconnected with the basis for the

assessment of liquidated damages.” We believe that respondent’s criterion is incorrect. When the 33.3 delay days we found are added to the last contract completion date established by the contracting officer in P00008, 18 August 1995 (finding 13), the properly adjusted contract completion date is 21 September 1995. Therefore, the 13 days of liquidated damages assessed by the contracting officer were not valid.

Appellant also requests us to clarify that our decision “was not intended . . . to foreclose release of the withheld amounts in connection with the as-built drawings, when and if it is established that the drawings have been provided.” Respondent argues that the record has been closed for receipt of evidence on delivery of as-built drawings, and MMC failed to provide such evidence. We agree. See our finding 15.

We clarify our decision to the extent set forth above, and deny the balance of the motion for reconsideration.

Dated: 13 June 2001

DAVID W. JAMES, JR.
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. 51450, Appeal of Monterey Mechanical Co., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals