

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Rig Masters, Inc.) ASBCA No. 52891
)
Under Contract No. DACW38-93-C-0010)

APPEARANCES FOR THE APPELLANT: Stephen D. Wheelis, Esq.
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Alexandria, LA

APPEARANCES FOR THE GOVERNMENT: Frank Carr, Esq.
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Vicksburg

OPINION BY ADMINISTRATIVE JUDGE PAGE
ON RESPONDENT'S MOTION TO STRIKE

This appeal arises from a contract between Rig Masters, Inc. and the U.S. Army Corps of Engineers, Vicksburg District for the inspection, operation, maintenance and repair of the Tensas-Cocodrie Pumping Plant (R4, tab 4). The Government has filed a motion to strike portions of the complaint, asserting the Board is without jurisdiction under certain legal theories pled.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

According to its certified claim, appellant submitted a proposal in accordance with Federal Acquisition Regulation (FAR) 52.248-1 VALUE ENGINEERING (MAR 1989) - ALTERNATE III (APR 1984) which provided generally that the contractor was encouraged to submit value engineering change proposals (VECP), and that the contractor would share in any net acquisition savings realized from an accepted VECP. Rig Masters contends that its VECP dealing with operation of the pumping station was employed by the Government to its benefit, and resulted in substantial savings of costs for both electricity and labor at the Tensas-Cocodrie Plant and other pumping facilities. (R4, tab 3) The contractor's monetary claim for a share of those savings was denied by the contracting officer (CO) on the basis

that the savings were “collateral savings” for which the contract did not provide recovery, as opposed to “acquisition savings,” *i.e.*, those realized under the instant contract. (R4, tab 2)

Timely appeal was made. (R4, tab 1) Pleadings were filed by the parties, and Rig Masters sought an award of its share of the savings. It also made reference to several legal theories including specific performance. The Government filed a motion to strike paragraph Nos. 20, 21, 22, 23, and 26 and the prayer for relief in the complaint filed by Rig Masters, “to the extent that they request injunctive relief or specific performance” as the Board lacks jurisdiction to grant such relief. In reply, Rig Masters stated that although it alleged “the cause of ‘specific performance,’” its intent was to have the terms and conditions of the contract allowing it to share in savings enforced and the Government fulfill its obligations under the agreement (app. resp. at 2).

DECISION

As the Government correctly asserts, the Board is without jurisdiction to hear a matter which seeks only specific performance or injunctive relief. *Maria Manges*, ASBCA No. 25350, 81-2 ¶ 15,398, *recon. denied*, 82-1 BCA ¶ 15,665. Although its complaint is couched in part in terms of specific performance, to the extent appellant petitions the Board to interpret contract terms and grant monetary remedies provided therein, the Government’s motion to strike is denied. The proper interpretation of a contract is a question of law, *P.J. Maffei Building Wrecking Corp. v. United States*, 732 F.2d 913, 916 (Fed. Cir. 1984), and the Board is authorized to construe the contract and determine the rights of the parties thereunder. *E.L. Hamm & Associates, Inc.*, ASBCA No. 43972, 94-2 BCA ¶ 26,724; *Dixon Pest Control, Inc.*, ASBCA No. 41042, 91-1 BCA ¶ 23,640.

We also observe that the portion of ¶ 22 seeking reimbursement for appellant’s attorneys’ fees and expenses is premature. Recovery of these items is subject to a waiver of sovereign immunity pursuant to the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504. If Rig Masters qualifies as a prevailing party after an adjudication on the merits of this appeal and is otherwise eligible, it may file a proper application within the period specified by EAJA. *See Erisco Industries, Inc.*, ASBCA No. 43562, 93-2 BCA ¶ 25,623 at 127,529-30 and *Asfaltos Panamenos, S.A.*, ASBCA No. 41657, 92-3 BCA ¶ 25,141 at 125,316.

We grant the motion in part, to the extent Rig Masters seeks specific performance or injunctive relief as opposed to monetary relief.

Dated: 13 June 2001

REBA PAGE
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. 52891, Appeal of Rig Masters, Inc., rendered in conformance with the Board's Charter.

Dated:

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