

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Fire Security Systems, Inc.) ASBCA No. 53498
)
Under Contract No. N62467-99-C-1017)

APPEARANCE FOR THE APPELLANT: Terrence M. O'Connor, Esq.
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APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.
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Washington, DC

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

Appellant Fire Security Systems, Inc. (FSS) seeks reconsideration of the initial decision on this appeal, dated 26 March 2002 and published at 02-1 BCA ¶ 31,806. Familiarity with that decision is presumed in the text which follows.

The issue in this appeal is whether the Government is entitled to a downward equitable adjustment of the contract price as the result of the issuance of unilateral Contract Modification No. P00003 which deleted valve housing enclosure (VHE) structures required by the contract drawings. FSS does not contest the holding of the initial decision that Contract Modification No. P00003 was an effective deductive change order. 02-1 BCA at 157,126. FSS asserts, however, that the Government is not entitled to a price reduction for that change order inasmuch as FSS “did not save much if anything since [it] did not include much if anything for the [VHE’s] in its bid” (motion, 2).

In compiling its bid price for the present contract, FSS assumed that, after contract award, the Government would implement a series of design changes developed by FSS under Contract No. 1. One of these (referred to as Change No. 4) called for the deletion of the VHE’s enclosing the vertical fire system riser sections which would be relocated from the exterior to the interior of the buildings under Change No. 3 (findings 3-5). Based on the above assumption, FSS did not price the VHE work on the basis of the solicitation drawings. Instead, in pricing that work, FSS omitted the costs of required work which it expected to be deleted upon implementation of Change No. 4. (Finding 10)

The decision of FSS to omit costs of required work in the expectation of its later deletion could not deprive the Government of entitlement to a price reduction when the deletion was actually effected subsequent to contract award. This rule was stated and explained in *Knight's Piping, Inc.*, ASBCA Nos. 46985, 46987, 94-3 BCA ¶ 27,026 at 134,716, as follows:

The integrity of the competitive procurement process obliges bidders to base their bid prices on the specified contract requirements as solicited and not substitute their subjective expectations about what work will need to be performed. Therefore, the amount the contractor actually bid for later deleted work is irrelevant to the computation of the downward adjustment due the Government. Accordingly . . . the Government is entitled to a credit for the deletion of [specified work], based on the amount the work would have cost if it had not been deleted.

We have reconsidered the initial decision in the light of the matters set forth in the motion. On the foregoing basis, the initial decision is affirmed in all respects.

Dated: 24 July 2002

PENIEL MOED
Administrative Judge
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 No. 53498, Appeal of Fire Security Systems, Inc., rendered in conformance with the Board's Charter.

Dated:

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