

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Huff Sealing Corp.) ASBCA No. 53587
)
Under Contract No. N62470-99-C-9207)

APPEARANCE FOR THE APPELLANT: Ron Ramey, Esq.
Houston, TX

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.
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Washington, DC

OPINION BY ADMINISTRATIVE JUDGE JAMES
UNDER RULE 12.3

This appeal arises from the final decision of the contracting officer (CO) which denied appellant's 25 February 2001 claim alleging a compensable, 5½-day work stoppage under the captioned contract. The Board has jurisdiction of the appeal under the Contract Disputes Act of 1978, 41 U.S.C. § 607. After a one-day hearing in St. Louis, MO, the parties submitted post-hearing briefs. Only entitlement is to be decided (tr. 8).

SUMMARY FINDINGS OF FACT

1. On 29 September 2000, the Department of the Navy awarded Contract No. N62470-99-C-9207 (the contract) to Huff Sealing Corp. (Huff) for repairs at designated locations on runway No. "7-25" (the runway) at the airfield at Roosevelt Roads Naval Station, Puerto Rico (R4, tab 1 at 1, tab 3 at 3).
2. The contract required repairs of the runway at locations called "Phases" 1, 2, 3, 4A and 4B. Phase 4A encompassed the intersection of the runway with "runway 18," the airfield's only other runway. (R4, tab 3 at 3)
3. Specification § 01150 required work to progress from Phase 1 to Phase 4B and that "each phase shall be useably complete and approved by the [CO] prior to starting work in the next phase," allowed performance of phases 1 and 2 concurrent with phases 3, 4A and 4B, required closing the runway for the contractor to work between 2:00 PM and 5:30 AM and re-opening the runway for air operations at 6:00 AM, and stated:

3.1.2 Schedule of Work/Aircraft Operating Schedules

Schedule work to conform to aircraft operating schedules. The Government will exert every effort to schedule aircraft operations . . . to permit the maximum amount of time for the Contractor's activities; however, in the event of emergency, intense operational demands, adverse wind conditions, and other such unforeseen difficulties, the Contractor shall discontinue operations at the specified locations in the aircraft operational area for the safety of the Contractor and military personnel and Government property. . . .

(R4, tab 1 at 01150-1, -2)

4. Specification § 01140, ¶ 1.1.2, required the contractor to perform 8½ hours per day, Monday through Friday (R4, tab 1 at 01140-1). Specification § 01320 required the contractor to submit for the CO's approval a construction schedule in the form of a progress chart or CPM network analysis, showing the dates on which it contemplated starting and completing the several salient features of the work, and to submit updates thereof at monthly intervals or when such schedule was revised (R4, tab 1 at 01320-1, -2).

5. The contract included, *inter alia*, the FAR 52.242-14 SUSPENSION OF WORK (APR 1984) and 52.243-4 CHANGES (AUG 1987) clauses (R4, tab 1 at 00721-11).

6. The contract originally required completion of all work within 150 calendar days after receipt of award (R4, tab 1 at 1). Unilateral contract Modification No. P00001, executed 1 November 2000, stated that the contract completion date was 13 March 2001 (R4, tab 2).

7. Huff's construction schedule dated 17 November 2000 proposed to commence work on or about 15 January 2001, to perform phases 1 and 2 concurrently and phases 3, 4A and 4B sequentially thereafter, and to complete work by 13 May 2001 (R4, tab 22).

8. Respondent's 22 November 2000 letter to Huff regarding the contract stated that due to operational requirements, the Government wanted to prohibit on-site work until 15 January 2001 and to execute a 60-day, no-cost, time extension to the contract (R4, tab 6). Bilateral contract Modification No. P00002, executed on 28 December 2000, extended the contract completion date by 60 days to 12 May 2001 (R4, tab 2). The Navy approved Huff's proposed contract construction schedule on 3 January 2001 (R4, tab 22).

9. Huff's 11 January 2001 letter requested, and respondent approved, to work seven days a week and ten hours per day (R4, tab 14 at 1; tr. 52).

10. On 16 February 2001, ENS Christopher Rapp, the Assistant Resident Officer in Charge of Construction (AROICC), learned from his superiors, and advised Huff's President, Kent Huff, and its on-site project manager, James Hutchinson, that the German Navy soon would operate aircraft carrying live ammunition off the Roosevelt Roads airfield (tr. 38-39, 61, 63-65).

11. According to ENS Rapp, someone in the U.S. Navy planned and may have known about the German Navy's use of the Roosevelt Roads airfield about 30 days before the German aircraft arrived, but it was unforeseen by the ROICC office (tr. 33-34). According to Mr. Hutchinson, due to a statement of LT Grant Hargrave, the predecessor AROICC, the U.S. Navy knew that the German Navy planned maneuvers for Roosevelt Roads the year before (2000) (tr. 71-72, 74). We find that the German Navy's use of the Roosevelt Roads airfield was foreseen by the U.S. Navy in 2000.

12. On 23 February 2001, ENS Rapp knew that Huff was repairing Phase 4A on the runway (tr. 19-21). ENS Rapp's 23 February 2001 letter to Huff stated that "due to requirements for minimum safe distance from ordnance," no contractor work would be permitted on the runway at the following times:

<u>Date</u>	<u>Time</u>	<u>Effectuated [sic] Area (phase)</u>
26 FEB	All day	4A and most of 4B
27 FEB	All day	4A and most of 4B
1 MAR	All day	Entire runway
5 MAR	Before 1000	Entire runway
9 MAR	All day	Entire runway
10 MAR	All day	Entire runway
11 MAR	Before 0800	Entire runway

ENS Rapp's letter directed Huff to "provide a breakdown for the cost impact of this schedule change" and substantiation for any requested time extension no later than 1 March 2001. (R4, tab 7) ENS Rapp admitted that his aforesaid direction shut down Huff's work for 5½ days, and Huff had no other work to perform on Puerto Rico during those days (tr. 23, 55). Huff's Daily Production Reports for such days indicated no rainfall and showed no work performed (R4, tab 4).

13. Huff's 25 February 2001 letter to the AROICC requested a six-day extension of contract completion and \$70,946 for projected "loss of revenue" during "no work days." Huff calculated that \$70,946 by multiplying \$12,899.27, the daily average derived from the \$412,776.78 in total "project net revenue" for 8 items of contract work done in the first 32 days of performance, by 5½ days. (R4, tab 8)

14. During weekly progress meetings, Huff orally advised the AROICC that it was “leaning toward finishing early.” Huff completed the contract work by 29 March 2001, 44 days ahead of the 12 May 2001 contract completion date. (Tr. 50, 53-54) On or after 29 March 2001, Huff’s updated construction schedule first advised respondent in writing that Huff intended to complete the work early (tr. 88).

15. Huff’s 30 April and 20 June 2001 letters revised its “no work days” claim to \$74,381.47, including \$7,778.40 for five days of “constant” overhead costs, and \$66,603.07 for daily housing and telephone charges for field laborers sent from the U.S. to Puerto Rico, field labor costs and field equipment costs (R4, tabs 13, 15 at 30; tr. 67).

16. The CO’s 18 October 2001 final decision denied Huff’s \$74,381.47 claim. Huff timely appealed that decision to the ASBCA on 31 October 2001. The appeal was docketed as ASBCA No. 53587.

DECISION

Huff argues that the AROICC’s 23 February 2001 letter ordering Huff to shut down work on 7 days in February-March 2001 entitles it to 5½ days of suspension damages. Respondent admits that it ordered Huff to discontinue or suspend work, but argues that such suspension is not compensable for three reasons.

First, according to the Navy, such discontinuation of work was authorized by ¶ 3.1.2 of specification § 01150, which allows no compensation for such discontinuation. As we interpret ¶ 3.1.2, each criterion for discontinuation of work requires proof of “unforeseen difficulties.” The U.S. Navy foresaw in 2000 the German Navy’s use of the Roosevelt Roads airfield that prompted the AROICC’s letter to Huff (finding 11). Therefore, such maneuvers were not “unforeseen” within the meaning of ¶ 3.1.2.

Respondent argues that such suspension was not “unreasonable” under the FAR 52.242-14 SUSPENSION OF WORK clause because Huff was ahead of schedule working on Phase 4A, rather than on Phase 3 as originally planned, when the AROICC stopped Huff’s work; two of the days of stopped work were a Saturday and Sunday, so the stoppage was little over two days; and the AROICC ordered the work stoppage for the safety of Huff and Navy employees due to live explosives on the German aircraft using the airfield. These arguments are not valid, since respondent previously had approved Huff’s request to work seven days a week (finding 9), the AROICC knew of Huff’s work at Phase 4A on 23 February 2001, and in 2000 respondent knew and planned for the German Navy use of the airfield (finding 12).

We are persuaded that the sporadic interruptions caused by the AROICC’s order for Huff to stop work on 26-27 February, to resume work on 28 February, to stop work on 1 March, to resume work on 2-4 March, to stop work on 5 March, to resume work on

6-8 March, to stop work on 9-11 March, and to resume work thereafter (finding 12), when the ARI OCC knew that Huff had no other work it could perform during such stoppages, were unreasonable under those circumstances. We believe that the suspensions resulting from the occurrence of events planned by the U.S. Navy before Huff began contract performance on 15 January 2001 are most akin to a suspension resulting from a defective Government specification, whose entire delay is unreasonable. See *Chaney & James Constr. Co. v. United States*, 421 F.2d 728, 731-32, 190 Ct. Cl. 699, 705-06 (1970). Moreover, the Suspension of Work clause provides for a price adjustment even though the contract is completed within the specified completion time. See *Eichof Constr. Co.*, ASBCA No. 20049, 77-1 BCA ¶ 12,398 at 60,054.

Lastly, respondent contends that Huff's unabsorbed home office overhead costs are not recoverable because Huff did not prove that from the outset of the contract it intended to complete performance early, it had the capability to do so, and actually would have completed early but for the Government's actions, citing *Interstate General Government Contractors, Inc. v. West*, 12 F.3d 1053, 1058-59 (Fed. Cir. 1993). We do not decide this argument regarding unabsorbed home office overhead costs, because the quantum of damages is not before us and the *Interstate General* criteria are irrelevant to entitlement to the direct costs and field overhead Huff claims (finding 15).

We hold that Huff has established entitlement to 5½ days of compensable delay under the SUSPENSION OF WORK clause. We sustain the appeal. We remand the appeal to the parties to resolve quantum.

Dated: 3 May 2002

DAVID W. JAMES, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

(Signature continued)

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. 53587, Appeal of Huff Sealing Corp., rendered in conformance with the Board's Charter.

Dated:

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