

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Moore & Cowart Contractors, Inc. ) ASBCA No. 54014  
 )  
Under Contract No. DACW47-02-C-0009 )

APPEARANCE FOR THE APPELLANT: Mr. Mike Moore  
Vice President

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.  
Engineer Chief Trial Attorney  
Darrell R. Riekenberg, Esq.  
District Counsel  
Dennis A. Wallace, Esq.  
Engineer Trial Attorney  
U.S. Army Engineer District,  
Albuquerque

OPINION BY ADMINISTRATIVE JUDGE PAGE

This appeal was taken from a final decision of the contracting officer (CO) denying appellants claim seeking \$13,388.44 alleging additional costs to provide footing reinforcement in accordance with government direction. The underlying contract was for the construction of a flood prevention facility in El Paso, Texas. The parties elected to proceed without a hearing pursuant to Board Rule 11. Entitlement only is before the Board. We sustain the appeal.

FINDINGS OF FACT

1. On 13 June 2002, the U.S. Army Engineer District, Albuquerque, awarded firm fixed-price Contract No. DACW47-02-C-0009 in the amount of \$3,690,793 to Moore & Cowart Contractors, Inc. (M & C). The contract was for construction of Lomaland Phase IV, El Paso County, Texas, a complex series of basins and waterways for the purpose of flood prevention. (R4, tab D2)

2. M & C asserted that contract drawings required type 2 wall footings and associated steel integral with a slab to be constructed in accordance with plate S4 "WALL SCHEDULE, SECTIONS AND DETAILS." The dispute relates to reinforced steel configuration for four structures within the project: the Baseline "C" Inlet, the Emergency Spillway Inlet, the La Paz Inlet, and the Venado Inlet. (R4, tabs C, D15, E4) These structures are detailed in the project plans on drawing sheets S29, S32, S34, and

S36, respectively (R4, tabs D16-19). The government disagreed, and required M & C to provide footings with the same reinforcements as the main slab (R4, tabs C, E5).

3. The contract incorporated standard clauses, including FAR 52.233-1 DISPUTES (DEC 1998) and FAR 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997) (R4, tabs D2, D5).

4. Drawings S29, S32, S34, and S36 provided structure sections for each respective concrete structure (R4, tabs D16-19). Drawing Plate S4 “WALL SCHEDULE, SECTIONS AND DETAILS” provides a wall schedule with dimensions “A, B, C, E, WT, FT” and reinforcement “V1, V2, D, H1, L1, L2, L3” for two basic wall types. The wall schedule detailed reinforcing steel bar size and spacing for the walls and footings. Section 2 of plate S4 provides information on wall type 2, including reinforcements for footings integral to the slab. The section did not call out main slab reinforcing steel. (R4, tab D15) The parties’ arguments presuppose that the walls at issue were “Wall Type 2” (compl. at II; answer at ¶ 5; gov’t br. at 11-13).

5. Drawing S29 for the Baseline “C” Inlet included the following pertinent keyed note referenced in drawing sections 1 and 4: “13. WALL REINFORCING TO MATCH PLATE S4, WALL E. FIELD TRIM AS NECESSARY.” Drawing sections 1, 2, and 3 referenced keyed note 12 which stated: “12. WALL E, TYPICAL, SEE PLATE S4 FOR WALL REINFORCING.” Section cuts 2 and 3 showed main slab reinforcing in detail. Section 4 did not indicate main slab reinforcement. (R4, tab D16)

6. Drawing S32 for the Emergency Inlet Spillway, section 1 did not show wall or main slab reinforcement, but did contain the following note: “17. BASIN WALL, SEE PLATE S4 FOR REINFORCING.” Details A, B, C, and D showed main slab reinforcing in detail; among keyed notes calling out the reinforcements are 3 and 11. (R4, tab D17)

7. Drawing S34 for the La Paz Inlet included the following pertinent keyed note which was referenced in drawing section 3: “19. WALL D, SEE PLATE S4.” That section did not show wall or main slab reinforcement. Drawing sections 5-7 detail main slab reinforcing. Keyed note 7 is referenced on these three sections and states as follows: “7. FOR WALL DESIGNATION, SEE PLATE S33. FOR WALL REINFORCEMENT, SEE PLATE S4.” (R4, tab D18)

8. Drawing S36 for the Venado Inlet, sections 2-5 showed main slab reinforcement in detail and called out reinforcements in keyed notes, 1, 2, and 6. Each of these sections also referenced the following pertinent keyed note: “4. FOR WALL REINFORCING SEE PLATE S4.” (R4, tab D19)

9. There is no evidence that appellant made any inquiries during the bidding process regarding the reinforcing steel details for the structures at issue (R4, tab E1).

M & C asserts it relied upon plate S4 in determining footing reinforcements (R4, tabs E4, E10).

10. On 30 July 2002, the government reviewed Transmittal No. 26, ENG FORM 4025, regarding M & C's shop drawings for reinforced steel for the Venado Inlet. The government disapproved the submittal on 7 August 2002, commenting: "See Attached DRWG. For Correct Config's. Wrong Config's Used By Detailer." The government's corrected configurations indicated that the contractor's shop drawings should have shown the use of footing rebar sized consistently with sections 2-4, main slab details, and related footnotes on drawings S35 and S36. Instead, the contractor had sized wall and footing rebar according to plate S4. (R4, tabs E2, E3)

11. By electronic mail correspondence dated 5 August 2002, Albuquerque District Office structural engineers concurred with El Paso Project Office field personnel that slab reinforcing for the Venado Inlet is as specified on drawings S36, sections 2-4. The district advised that "vertical [wall] rebar only and the dowels into the slab" are specified in plate S4. (R4, tab E3)

12. By Serial Letter No. 7 dated 6 August 2002, M & C took issue with the government's interpretation of footing requirements. It alleged that the project plan had reinforcing discrepancies concerning wall detailing with integral slab footings:

. . . there are apparent discrepancies with regards [sic] to the project plans. We were notified yesterday, that reinforcing steel for wall footings integral with slab reinforcing was not as we initially understood at time of bid.

We were told that reinforcing would follow slab details for each individual rundown. This does not follow with wall details as determined on the wall schedule, Sheet S4, for type "2" walls with footings integral with a slab. We were told that the wall schedule was for vertical and horizontal bars in the walls only. If this is indeed fact, why are transverse and longitudinal bars, H1 and L3 bars, detailed in the footings and listed in the wall schedule?

At time of bid, take off for the walls and footings was determined by each specific wall type as detailed on Sheet S4. This schedule was also followed by D'Ambra Steel Services as they produced shop drawings for the project.

The change will incorporate much more steel in each footing than was anticipated and will have attached additional costs for which we will seek compensation. . . .

(R4, tab E4)

13. By letter dated 8 August 2002<sup>1</sup>, the government informed appellant that it found no merit to its claim regarding project plan discrepancies and directed appellant to proceed and correct its shop drawings without additional compensation (R4, tabs E5, E6).

14. By letter dated 13 August 2002, appellant filed a claim in the amount of \$13,868.29 with the Albuquerque District seeking “compensation for additional work and materials due to discrepancies in the project plans” for all four structures in dispute (R4, tab C). As corrected for mathematical errors, the claim is for \$13,388.44 (R4, tab E9; compl. ¶¶ I.7, II).

15. By letter dated 11 October 2002, the CO denied appellant’s claim in its entirety (R4, tab B). Appellant timely appealed to the Board.

#### DECISION

At issue is the correct interpretation of contract requirements for type 2 wall footings for structures found on drawings S29, Inlet Structure; S32, Spillway; S34, Inlet at La Paz; and S36, Inlet at Venado. M & C contends it reasonably relied at bid upon footing requirements for type 2 walls on plate S4 “WALL SCHEDULE, SECTIONS AND DETAILS,” and is due compensation for the government’s insistence upon footings consistent with main slab reinforcements on the subject drawings. (R4, tab E4)

The government does not dispute that section 2/S4/S4 WALL TYPE of plate S4 requires type 2 vertical walls to connect to the horizontal slab with reinforcing bars H1 and L3 integral to that juncture, or that further information regarding H1 and L3 is detailed in the drawing’s WALL SCHEDULE (gov’t br. at 4; R4, tab D15). However, with the exception of structures on section 3 of drawing S34, the government maintains that M & C should have provided footings with the same reinforcement required for the main slab at each of the subject locations (gov’t br. at 8, 11). The government notes that section 1/S31/S32 also “does not show either wall or slab steel but does show Key Note 17” which states “Basin Wall, See Plate S4 for Reinforcing” (gov’t br. at 8). The government agrees that section 2 of plate S4 controls where no main slab reinforcement is shown, as on section 3 of S34. Despite these acknowledgments, the government nonetheless required M & C to change the Spillway and LaPaz footings reinforcements to

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<sup>1</sup> The date of this letter had been corrected from 17 July 2002 to 8 August 2002. (R4, tab E6)

comport with main slab requirements. The government asserts that the reference in other drawings to plate S4 pertains to vertical wall reinforcements only, not the footings. (R4, tab E3; gov't br. at 4, 7, 11-13). Although not discussed by the government, section 4/S29 INLET STRUCTURE does not show main slab reinforcement (R4, tab D16).

After being apprised of the government's interpretation of the contract, M & C declared that the reinforcing steel the government required was not "as we initially understood at time of bid" with respect to footing requirements because it followed plate S4 at bid (R4, tab E4). In matters of contract interpretation, we are guided by the principle that the contract must be read a whole. An interpretation which gives a reasonable meaning to all parts of the agreement will be preferred to one which renders portions meaningless or superfluous. *Hol-Gar Mfg. Corp. v. United States*, 351 F.2d 972 (Ct. Cl. 1965).

We find that only the contractor reasonably interpreted the footing requirements. Typical wall details for the type 2 walls on plate S4 clearly call out reinforcements for both the vertical wall and integral footings where the wall joins the slab. Whereas drawings S29, S32, S34, and S36 do not specify footing reinforcements, each directs the contractor to plate S4 for wall reinforcements where section 2 depicts reinforcement for both the vertical portion of the wall and the point at which it joins the main slab, *i.e.*, the subject footings. The government does not adequately support its contention that the contractor must use the type 2 wall details for some type 2 walls but not others, and fails to prove its interpretation was reasonable.

Although the government contends that M & C cannot recover because it has not shown reliance at bid upon the interpretation now urged, gov't br. at 13-14, that argument is misplaced. A finding of prebid reliance is necessary only where the contract is ambiguous. M & C's "was the only logical and reasonable interpretation," and it is "well-settled that proof of prebid reliance is not required" under such circumstances. *Grumman Aerospace Corporation*, ASBCA Nos. 46834 *et al.*, 03-2 BCA ¶ 32,289 at 159,771 citing *Philip Environmental Services Corporation*, ASBCA Nos. 53445, 53573, 02-1 BCA ¶ 31,841 (and cases cited therein).

## CONCLUSION

M & C reasonably interpreted the contract to require type 2 walls on drawings S29, S32, S34, and S36 to be controlled by the information on plate S4 WALL SCHEDULE SECTIONS AND DETAILS. The footings clearly are shown in section 2 of plate S4 to be integral to the wall, and the absence in that drawing of main slab reinforcing detail is consistent with depictions of that feature on S29, certain sections of S32 and S34, and S36. The appeal is sustained and returned to the parties for negotiation of quantum.

Dated: 2 March 2004

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REBA PAGE  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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

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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. 54014, Appeal of Moore & Cowart Contractors, Inc., rendered in conformance with the Board's Charter.

Dated:

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DAVID V. HOUBE  
Acting Recorder, Armed Services  
Board of Contract Appeals