

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
White Sands Construction, Inc.) ASBCA No. 54029
)
Under Contract No. DACA63-96-D-0022)

APPEARANCE FOR THE APPELLANT: F. Randolph Burroughs, Esq.
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Alamogordo, NM

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.
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U.S. Army Engineer District,
Fort Worth

OPINION BY ADMINISTRATIVE JUDGE SHACKLEFORD
ON GOVERNMENT’S MOTION FOR RECONSIDERATION

The government timely filed a motion for reconsideration of the Board’s decision in this appeal, challenging only our finding with respect to the amount of material costs incurred by appellant during Option III of the contract. *White Sands Construction, Inc.*, ASBCA Nos. 51875, 54029, 04-1 BCA ¶ 32,598. Although given an opportunity, appellant did not respond to the motion.

This was an appeal from a decision denying a claim based upon the improper exercise of an option. We sustained the appeal as to entitlement, made findings with respect to quantum and remanded the appeal to the parties to seek agreement on a profit rate. If the parties could agree to profit, a bottom line amount could be simply determined.

With respect to the cost of materials incurred by appellant during Option III, the government says either the record did not support the amount we determined for this item, or we made a mathematical mistake. In Finding 31, we stated in pertinent part, as follows:

While the invoices are not part of the record in these appeals, the job cost detail reports are included and we find them credible (ex. A-19). The claim prices this item at . . . \$88,978.96 in Option III The job cost detail reports

justify material costs of . . . \$101,007 in Option III . . . and we find that amount was incurred

White Sands, 04-1 BCA at 161,303.

We have checked the mathematics and affirm that the amount justified in the job cost detail reports is \$101,007. The components of that number are as follows:

DO 67	\$6,854.14
DO 68	1,300.17
DO 69	47,080.59
DO 70	15,078.26
DO 74	18,665.80
DO 75	2,108.64
DO 76	4,151.13
DO 77	<u>5,768.49</u>
Total	\$101,007.22

All of the enumerated costs are coded 01 in the job cost reports for each delivery order except that DO 74 includes an additional material cost of \$5,200 coded A1 which is also included in our total.

We suspect that the government excluded the \$5,200 from its computation and double counted the negative entries in the detailed job cost reports as reflected in the following statement in the government motion:

Adding all of the entries for material costs listed for invoices 67 through 77 totals \$95,807.22. Subtracting from this total all costs designated by the dash [negative sign] (\$5,647.43) leaves a remainder of \$90,159.79.

. . . Respondent is uncertain what other adjustments Appellant made in their determination that material costs for option year III resulted in submitted costs totaling \$88,978.96.

(Motion at 3)

Adding that \$5,200 from DO 74 to the \$95,807.22 figure used in the quoted government argument, yields a total of \$101,007. As to the suggestion that we need to subtract all negative costs from the delivery order totals for materials, if the government relied upon the “Phase Code 01 Total” for each purchase order, it erroneously assumed it

was a sum of only the positives, when in fact, those sums took the negatives into account, and thus there is no need to subtract them a second time.

Even though we, like the government, do not know what adjustments appellant made that resulted in reducing its claim from \$101,007 to \$88,978.96 for Option III material costs, appellant nevertheless proved it incurred \$101,007. We are not persuaded this number should be reduced.

On reconsideration, we affirm our previous finding with respect to material costs for Option III.

Dated: 14 July 2004

RICHARD SHACKLEFORD
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. 54029, Appeal of White Sands Construction, Inc., rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals