

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Lockheed Martin Aircraft Center) ASBCA No. 54909
)
Under Contract No. N00019-00-D-0279)

APPEARANCE FOR THE APPELLANT: Angela R. Miller, Esq.
Associate General Counsel
Lockheed Martin Aircraft &
Logistics Centers
Greenville, SC

APPEARANCES FOR THE GOVERNMENT: Susan Raps, Esq.
Navy Chief Trial Attorney
Anthony P. Conductor, Esq.
Assistant Counsel
Naval Air Systems Command
Patuxent River, MD

OPINION BY ADMINISTRATIVE JUDGE YOUNGER
UNDER RULE 12.3

In this appeal under Rule 12.3, the issue is whether a particular aircraft inspection procedure is among the regimen of tasks included in a maintenance procedure called for by the parties' requirements contract, or is a separately priced item under that contract. Both parties have elected to have the appeal decided on the record pursuant to Rule 11. Only entitlement is before us. We deny the appeal.

FINDINGS OF FACT

1. Effective as of 1 August 2000, respondent awarded appellant Contract No. N00019-00-D-0279 to perform various specified maintenance and inspection actions, chiefly on Navy and Marine Corps aircraft (R4, tab 7 at 1-7). The contract, which was competitively bid, incorporated various standard clauses including FAR 52.216-18, ORDERING (OCT 1995) and FAR 52.216-21, REQUIREMENTS (OCT 1995) (*id.* at 106-07). In addition to the standard clauses, the contract also contained Section C, DESCRIPTION/SPECIFICATIONS/PWS. It included subsection C-1, AIRCRAFT DEPOT MAINTENANCE REQUIREMENTS. Paragraph a, SUPPLIES OR SERVICES TO BE PROVIDED, stated that "[t]he Contractor shall accomplish the work identified below upon receipt of a written order from the Government. The Government shall not

be liable for any expense incurred by the Contractor under any item identified below until an order has been issued.” (*Id.* at 44)

2. The contract contained Section B-2, FIRST OPTION YEAR AIRCRAFT DEPOT REQUIREMENTS, which in turn included Part A, BASIC FIXED PRICE REQUIREMENTS. Contract line item (CLIN) 0101 provided for “SDLM [Standard Depot Level Maintenance] of Navy (C-9B/DC-9) Series Aircraft” (*id.* at 8). A C-9B is a type of Navy aircraft, and the unit price for CLIN 0101 was \$709,956 (*id.*). Section B-2, Part A, also included CLIN 0116, which provided “Accomplish Work set Forth In Exhibits C & D ELINS [Exhibit Line Item Numbers],” with no unit price stated (*id.* at 9).

3. Section C (*see* finding 1) also included Part A – FIXED PRICE ITEMS. It referred to CLIN 0101 and provided: “STANDARD DEPOT LEVEL MAINTENANCE (SDLM) FOR C-9B and DC-9 SERIES AIRCRAFT. The Contractor shall perform the SDLM requirements on Navy C-9B/DC-9 Series Aircraft as required in Sections 2 and 3 of the attachment (1)” and specified data requirements lists (*id.* at 44). Section C, Part A, also referred to CLIN 0116 and provided: “EXHIBITS D & E FIXED PRICE MAINTENANCE REQUIREMENTS, NAVY. The Contractor shall accomplish the Fixed Price Maintenance Requirements in accordance with the provisions set forth in Exhibits D & E when ordered by the ACO [Administrative Contracting Officer]” and according to specified data requirements lists (*id.* at 48).

4. Attachment 1 is the C-9 Airframe Depot Maintenance and Modification Performance Work Statement (PWS). It contained Section 2.0, General Requirements. Paragraph 2.0.1 provided that “[t]he Contractor shall provide and perform all services required by this PWS as defined and detailed in the Contractor’s Technical Proposal which shall be incorporated into this contract by reference” (*id.* at 135). Attachment 1 also included section 3, U.S. NAVY & USMC STANDARD DEPOT LEVEL MAINTENANCE (SDLM). It provided in paragraph 3.0, General, that:

The NAVY C-9 SDLM process includes visual, Non-Destructive Inspection . . . and functional checks of the airframe, engines, and systems, and, stripping and repainting of the aircraft SDLM consists of a thorough and comprehensive disassembly and inspection of the aircraft structure and flight critical components for identification of defects. . . . The Contractor shall accomplish all SDLM inspection and maintenance requirements as defined in the NAVAIR C-9/DC-9 SDLM and MTI Specification dated 15 October 1995 (Change 1).

(R4, tab 7 at 136)

5. Section II of the NAVAIR C-9/DC-9 SDLM and MTI Specification dated 15 October 1995 contains paragraph 2-1, GENERAL, which provided that “[t]his section of the SDLM Specification contains specific rework, inspection, test, and preventive maintenance requirements to be accomplished by the depot level rework activity responsible for accomplishing [SDLM] . . . of Navy/Marine C-9B/DC-9 aircraft” (*id.* at 146). Paragraph 2.6, STRUCTURAL and ZONAL REQUIREMENTS, contained the following chart:

Task ID NO.	WUC/PART NO.	ZONE NO	EFF.	REQUIREMENT	FREQ
ST 061A		2-3	A	Inspect wing sta. 58 lower bulkhead tee IAW SB57-98 R8, Option 1. (Note: Effectivity is 159113-159115, 159117-159118, 162753-162754, 163036-163037, 163511-163513, 164605-164608.	SDLM

(*Id.*, at 148) Paragraph 2.6.1, EXPLANATION OF HEADINGS, stated that the term “Effectivity” “identifies specific aircraft bureau numbers and any applicable threshold for which a given inspection task applies” and that “Frequency” denotes “the required frequency for performing individual inspection requirements.” (*Id.*, tab 1 at 20)

6. By date of 10 October 2000, respondent issued Delivery Order No. U806 to appellant for the induction of a Navy aircraft for an SDLM as follows:

CLIN	SUPPLIES/SERVICES	QTY/UNIT	UNIT PRICE	AMOUNT
0101	SDLM of Navy Aircraft	2 EA	\$709,956.00	\$1,419,912.00
0121	Conditional Maintenance NAVY SDLM	45,000 MHRS	\$69.24	\$3,115,800.00
0144	Contractor Purchased Material, Navy	1 REQ	\$2,514,828.00	\$2,514,828.00

(*Id.*, tab 3 at 71) Thereafter, by Modification No. U8061B dated 29 November 2000, respondent “task[ed] [appellant] to induct Navy BUNO 164606 [aircraft 606] on or about 19 December 2000 for. . . (SDLM)” (R4, tab 3 at 60). Thereafter, respondent delivered aircraft 606 to appellant for an SDLM, and it was subsequently returned to service. We find no evidence that, in connection with the SDLM, respondent placed an order under CLIN 0116.

7. The parties thereafter disputed whether a task referred to as a T-Cap inspection was included in the SDLM under CLIN 0101, or was compensable as an “over and above” task under CLIN 0116 (*e.g.*, R4, tab 1 at 7-14, tab 2 at 6). We find that a T-Cap inspection on a C-9 aircraft involves the non-destructive evaluation of a group of bolts located in the “Wing Station 58 lower bulkhead tee,” which is at a point at which the wing joins the fuselage. (Compl., ¶ 4; answer, ¶ 4)

8. By letter to the contracting officer dated 19 March 2004, appellant submitted a claim for \$28,320, which was said to represent the cost of a T-Cap inspection for aircraft 606 during its SDLM visit (R4, tab 1 at 18-22). Thereafter, by letter to appellant dated 2 November 2004, the contracting officer rendered his decision denying the claim (*id.* at 1-3). This timely appeal followed.

9. We find no credible evidence of a contracting practice of the parties to treat T-Cap inspections as falling under CLIN 0116. We further find no persuasive evidence that appellant either raised any ambiguity in the T-Cap inspection specification before award or that appellant relied on its current interpretation of the contract when bidding (*see* compl., ¶ 19, answer, ¶ 19).

DECISION

The issue dividing the parties is whether the contract required that appellant perform a T-Cap inspection (*see* finding 7) as an item included in the SDLM (*see* findings 3, 4), or whether the procedure should be treated as an “over and above” charge under CLIN 0116 (*see* findings 2, 3) for work to be performed in addition to the SDLM.

Appellant has not filed a brief arguing its case, but has instead submitted a letter asserting that its position “is adequately set forth in the Complaint and in [its] request for a Contracting Officer’s Final Decision.” Letter from Angela R. Miller to Recorder dated 17 May 2005. As we understand appellant’s position from the complaint, it relates to the alleged contracting practice of the parties. That is, appellant alleges that, under the present contract, and the predecessor contract, the parties developed CLIN 0116 to price tasks that every aircraft inducted for SDLM did not require. Hence, CLIN 0116 applied where the required work is known but its frequency is unknown. According to appellant, the T-Cap inspection is such an item. (Compl., ¶¶ 14-20) As we understand appellant’s position from the claim, however, it focuses on ambiguity. That is, appellant asserted that “neither the general effectivity listed within the Specification nor the specific effectivity listed within the specification paragraph is accurate. Accordingly, it was logical for the Government to establish [CLIN 0116] for this work and apply it anytime a requirement for the T-Cap Inspection occurs” (R4, tab 1 at 21).

For its part, respondent contends that familiar principles of contract interpretation preclude acceptance of appellant's argument. That is, respondent argues that the systems specification applicable to CLIN 0101 plainly calls for a T-Cap inspection, and treating it as an over and above charge would render part of CLIN 0101 meaningless. Respondent also insists that, in any event, two releases executed by appellant bar the present claim.

We conclude that appellant is not entitled to recover on its claim. In our view, CLIN 0101, which called for an SDLM (finding 2), includes a T-Cap inspection as a required task. Under Section C, Part A, the contractor was required to perform an SDLM as required in Sections 2 and 3 of attachment (1) (finding 3). In turn, Section 3 of that attachment called on the contractor to "accomplish all SDLM inspection and maintenance requirements as defined in" the SDLM specification (finding 4). One of the tasks identified in that specification as part of an SDLM was to "[i]nspect wing sta. 58 lower bulkhead tee" (finding 5), which is the portion of a C-9 aircraft in which the T-Cap is located (finding 7). Aircraft 606, which bears the full numerical designation BUNO 164606 (finding 6), is among those included in the "Effectivity" designation in paragraph 2.6.1 (*see* finding 5).

We are not dissuaded from the foregoing interpretation by appellant's argument that it should be separately compensated for the T-Cap inspection under CLIN 0116. Acceptance of appellant's argument would impermissibly render some parts of the CLIN 0101 provisions "useless, inexplicable, inoperative [or] void," *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991) (internal quotation marks omitted). In addition, the contractor was to accomplish the tasks in CLIN 0116 only "when ordered by the ACO" (finding 3), which is consistent with the limitations in both the ORDERING clause and paragraph a of Section C-1 (*see* finding 1). The order for the SDLM on aircraft 606 was issued under CLIN 0101, not CLIN 0116 (finding 6).

We also are not dissuaded by appellant's arguments regarding the alleged contracting practice of the parties or the claimed ambiguity in the contract. With respect to the former, appellant's allegations in the complaint regarding a different ordering practice, and various pricing understandings, under the predecessor contract have been denied by respondent. (Answer, ¶¶ 14-18, 20) We have found no persuasive evidence to overcome those denials (finding 9). With respect to the claimed ambiguity, even were we to agree with appellant, then if the ambiguity is patent, appellant must have raised the matter with respondent before award, but if it is latent, then appellant must establish that it relied on its current interpretation in bidding. *E.g., H. Bendzulla Contracting*, ASBCA No. 51869, 00-1 BCA ¶ 30,803 at 152,074-75. Appellant has done neither here (finding 9).

CONCLUSION

The appeal is denied.

Dated: 25 July 2005

ALEXANDER YOUNGER
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. 54909, Appeal of Lockheed Martin Aircraft Center, rendered in conformance with the Board's Charter.

Dated:

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