

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
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eciConstruction, LLC ) ASBCA No. 54942  
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Under Contract No. DAHA36-99-D-0009 )

APPEARANCES FOR THE APPELLANT: Theodore A. Adler, Esq.  
John H. Pietrzak, Esq.  
Reager & Adler, PC  
Camp Hill, PA

APPEARANCES FOR THE GOVERNMENT: Craig S. Clarke, Esq.  
Acting Chief Trial Attorney  
MAJ Gregory R. Bockin, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE KIENLEN  
ON  
GOVERNMENT MOTION FOR PARTIAL SUMMARY JUDGMENT  
UNDER RULE 12.3

The National Guard Bureau for the Departments of the Army and the Air Force, acting through the U.S. Property and Fiscal Office for Pennsylvania, Department of Military and Veterans Affairs, issued Purchase Order No. 0014 for the construction of a combined Medical Clinic in Building 4-114 at Fort Indiantown Gap, Pennsylvania, in the amount of \$1,608,595.00, to the appellant. The appellant accepted the government's purchase order offer on 20 September 2002. (Rule 4, tab 1)

Modification No. 01 resolved several outstanding change proposals for the increased costs of changed work, including appellant's change proposal no. 10. That change proposal also sought a 30-day time extension because of the delay in receiving information on the x-ray and panorex (dental) rooms. Modification No. 01 included a 14-day time extension for that delay. The effective date of that modification was 15 June 2003. (Rule 4, tab 72 at 00089)

After that modification was signed, the appellant submitted cost proposal no. 37 on 26 January 2004. Appellant sought \$71,724.22 in compensation and 3.5 months time extension for the delay in supplying electrical power to Building 4-114. (Rule 4, tab 85) The appellant's claim was denied by the contracting officer, and the appellant timely appealed to this board. Appellant has elected to proceed pursuant to Board Rule 12.3.

In its complaint the appellant alleged, among other facts, that there were numerous design deficiencies, including those related to the layouts for the x-ray and dental rooms. The appellant also alleged that there were 73 requests for information during the contract. The government avers that there were only 62 such requests. The appellant alleges that these requests delayed the appellant in preparing its submittals. In particular, the appellant alleges that the most critical delay was caused by the lack of electrical power. It is this latter allegation that is the gravamen of the claim submitted to the contracting officer and denied by letter dated 16 December 2004 (we note that the letter has a date stamp of 4 January 2005). In that final decision the contracting officer stated:

In the interest of maintaining a good business relationship between the Government and ECI, I believe it is in the best interests of the parties to settle this matter. The following offer of settlement does not constitute an admission of liability by the government . . . .

The Government's bottom line settlement offer is \$12,264.22.

(Rule 4, tab 92)

The government has moved for partial summary judgment upon the ground that Modification No. 01 released appellant's present claim to the extent it includes costs related to design issues from change proposal no. 10 (mot. at 1). The appellant responds that its claim before the Board does not relate to change proposal no. 10, but to the delay caused by the lack of electrical power.

### DECISION

The government has not established that appellant's present claim in fact overlaps change proposal no. 10. The only claim before the Board is appellant's claim for delay damages as a result of the delay in providing electrical power to Building 4-114. We do not have before us a claim for delay associated with obtaining information relating to the x-ray and dental rooms. To the extent facts relating to the x-ray or dental rooms are relevant to the present claim, each party is free to more fully develop those and other relevant facts at the hearing.

The motion for partial summary judgment is denied.

Dated: 16 June 2005

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RONALD A. KIENLEN  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

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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. 54942, Appeal of eciConstruction, LLC, rendered in conformance with the Board's Charter.

Dated:

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