

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Freedom NY, Inc.) ASBCA No. 55466
)
Under Contract No. DLA13H-85-C-0591)

APPEARANCES FOR THE APPELLANT: Bruce M. Luchansky, Esq.
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APPEARANCE FOR THE GOVERNMENT: Michael L. McGlinchey, Esq.
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OPINION BY ADMINISTRATIVE JUDGE JAMES
ON APPELLANT’S MOTION FOR RECONSIDERATION

On 16 January 2008 the Board received appellant’s timely motion for reconsideration of our 14 December 2007 decision, *Freedom NY, Inc.*, ASBCA No. 55466, 08-1 BCA ¶ 33,751. Appellant sought interest on amounts of \$326,887 and \$246,946.57. The Board denied the appeal entirely as to the amount of \$326,887. Familiarity with our prior decision is assumed.

Appellant’s 17 January 2006 certified claim sought interest on \$326,887, consisting of \$262,569 in “contract costs” and \$64,318 in “subcontractor settlement” (finding 22). On reconsideration, appellant switches gears. It now seeks interest on the amounts of \$116,527 “Inventory disposal credit” and \$151,614 “Credit for seized progress payment inventory.” It asserts that the amount of \$116,527 was included in “projected” contract costs of \$14,970,284 in the May 1991 claim, and that the amount of \$151,614 was included in the \$1,167,563 for designated equipment and other items lost through insolvency. It points to no evidence so indicating. (Findings 4, 13; app. br. at 4-6)

Respondent's 14 March 2008 opposition to the motion argues that movant failed to show that the \$116,527 and \$151,614 amounts were elements of its May 1991 claim and, even if they were, those amounts were not within the progress payment reservation to the Mod. A00004 release (gov't opp'n at 4-5).

Movant's two newly proposed credits of \$116,527 and \$151,614 were not elements of appellant's May 1991 claim. This is shown conclusively by the third and fifth paragraphs of the MOA accompanying the Mod. A00004 convenience settlement, signed by both parties, which paragraph stated in pertinent part (R4, tab 10 at 4):

. . . Freedom submitted its Final Termination Settlement Proposal on December 18, 1997

. . . .

At the time of negotiations and after the submission of the final termination settlement proposal, Freedom introduced new costs in the amount of \$275,000 . . . as compensation for property which the Government seized in 1987 prior to the original termination for default [and which \$275,000 amount was negotiated in the amount of \$151,614 (finding 13)]. . . . Lastly, Freedom sought a credit of \$116,527 . . . for seized contractor furnished material (CFM) which was sold to a 3d party. . . .

Therefore, appellant's motion for reconsideration has not shown that its two new elements of \$116,527 and \$151,614 were in its May 1991 claim. Accordingly, we deny the motion for reconsideration.

Dated: 26 March 2008

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

(Signatures continued)

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. 55466, Appeal of Freedom NY, Inc., rendered in conformance with the Board's Charter.

Dated:

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