

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
General Dynamics C4 Systems, Inc.) ASBCA No. 56862
)
Under Contract No. N00039-98-D-0029)

APPEARANCES FOR THE APPELLANT: William R. Stoughton, Esq.
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OPINION BY ADMINISTRATIVE JUDGE SCOTT ON APPELLANT’S MOTION
FOR ENTRY OF JUDGMENT AND GOVERNMENT’S MOTION TO DISMISS FOR
LACK OF JURISDICTION

Background

After a hearing covering entitlement and quantum, the Board sustained in part appellant’s appeal from the contracting officer’s final decision denying its claim under the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, for costs of its performance of e-mailed delivery orders that were not issued in accordance with the terms of appellant’s indefinite delivery, indefinite quantity contract to supply digital modular radios to the Navy’s Space and Naval Warfare Systems Command. *General Dynamics C4 Systems, Inc.*, ASBCA No. 54988, 09-2 BCA ¶ 34,150. Based upon established precedent, we treated the government’s failure to issue the delivery orders in accordance with the contract terms like the invalid exercise of an option. *Id.* at 168,817. We noted that, under Board precedent, an invalid option exercise is deemed to be a constructive contract change, entitling the contractor under that special circumstance to its actual costs plus a reasonable profit. *Id.* at 168,817-18. Although we made quantum findings, the record did not enable us to calculate the total amount due appellant. We concluded:

We sustain the appeal to the extent stated. The record does not permit the Board to calculate the precise amount due

to appellant. Therefore, the matter is remanded to the parties with the following instructions. The government shall pay appellant its claimed incurred costs as revised (finding 73)¹¹, plus 6.6% profit, plus license fees calculated in accordance with appellant's Prime Cost method, less payments made by the government, plus CDA interest calculated as of the CO's receipt of appellant's claim on 4 February 2004 (finding 57; 41 U.S.C. § 611).

Id. at 168,820.

The Motions

On 26 June 2009 appellant filed a motion for entry of judgment, alleging that the parties were unable to agree on the quantum amount due it. Appellant asks the Board to direct that: (1) the government pay it \$60,685,293, which is the total of its alleged labor, materials and other direct costs (including general and administrative (G&A) costs and its cost of money (COM)), plus warranty costs of \$8,172,044, including G&A and COM, plus software license costs of \$18,130,488, plus profit of \$2,626,574, which excludes profit on COM and software licenses; (2) the government pay it CDA interest on the full amount of \$60,685,293, as of the date of the CO's receipt of its claim, until the first payment by the government, and on the remaining unpaid amount after each payment; and (3) the government's payments to date in the total amount of \$33,415,403 be credited against the gross amount said to be due appellant (the total of items (1) and (2)). The Board docketed this quantum matter as ASBCA No. 56862.

On 24 July 2009 the Navy filed an opposition to appellant's motion for judgment, both on the merits and on the ground that it was an untimely motion for reconsideration. The Navy also filed a motion to dismiss ASBCA No. 56862 for lack of jurisdiction, contending that, because the Board had decided liability and quantum in ASBCA No. 54988, its jurisdiction over further proceedings was limited to resolving timely post-decision motions. On 4 August 2009 appellant filed its reply to the Navy's opposition to its motion for judgment, and its opposition to the Navy's motion to dismiss.

¹ The referenced finding 73 stated in relevant part: "The resulting revised claim was \$73,155,135, less \$33,212,706 in government payments, for a net of \$39,942,429" (09-2 BCA ¶ 34,150 at 168,816).

Discussion

The Navy's Motion to Dismiss for Lack of Jurisdiction

We first consider the Navy's motion to dismiss ASBCA No. 56862 for lack of jurisdiction. The Board's assignment of a new docket number to cover the quantum matters in ASBCA No. 54988 that were unresolved and remanded to the parties was for administrative convenience and comports with its standard practice. Appellant is correct that the Board retains jurisdiction under these circumstances. *Individual Development Associates, Inc.*, ASBCA Nos. 55174, 55188, 06-2 BCA ¶ 33,349 at 165,369.

Accordingly, we deny the Navy's motion to dismiss ASBCA No. 56862.

Appellant's Motion for Entry of Judgment

We do not consider appellant's motion for entry of judgment to be a motion for reconsideration but, rather, a request that the Board conclude the quantum proceedings. In view of the parties' disagreements, an as yet unresolved quantum record, and incomplete briefing on the quantum issues, it is premature for the Board to finally decide quantum. The Board will discuss with the parties further proceedings to resolve the remaining quantum issues.

Accordingly, we deny appellant's motion for entry of judgment.

DECISION

We deny the government's motion to dismiss and we deny appellant's motion for entry of judgment.

Dated: 20 August 2009

CHERYL L. SCOTT
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. 56862, Appeal of General Dynamics C4 Systems, Inc., rendered in conformance with the Board's Charter.

Dated:

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