

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
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PCT Services, Inc.) ASBCA No. 54932
)
Under Contract No. DABT57-00-C-0005)

APPEARANCE FOR THE APPELLANT: Mr. Melvin Johnson
General Manager

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.
Army Chief Trial Attorney
MAJ Kesabii L. Moseley, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE PAUL

This is a timely appeal of a contracting officer's (CO) denial of PCT Services, Inc.'s (PCT) certified claim in a total amount of \$161,000. A hearing was held at the Board's offices. Only issues of entitlement are before the Board for decision. The Contracts Disputes Act (CDA), 41 U.S.C. §§ 7101-7109, is applicable. We deny the appeal.

FINDINGS OF FACT

1. On 19 January 1999, the Army issued Solicitation No. DABT57-98-R-0050 for medical housekeeping services at medical treatment facilities (MTF) located on Fort Eustis, Fort Monroe, Fort Story and Fort Lee, Virginia (R4, tab 1 at 2-7, 20). Included in the Performance Work Statement (PWS) was an extensive "Definitions" section which contained the following, pertinent subsections:

2.6.1. **Vital Patient Care Areas.** Those specific locations in the hospital/clinic where the threat of nosocomial infection is greatest due to the presence of infectious micro-organisms, the means for transmission of the organisms, and the presence of susceptible hosts (i.e., human beings with lowered resistance). "Vital areas" consist of the following locations in the MTF: minor surgical areas,

treatment rooms, emergency rooms, as well as dental operating rooms.

(R4, tab 1 at 41)¹

2.3.3. **Surgical Areas.** Refers to all rooms/areas in the MTF where surgical or invasive diagnostic procedures are performed, to include operating rooms, critical care units (medical, surgical, and cardiac) recovery rooms, and emergency rooms.

(R4, tab 1 at 51)

2. The PWS also contained a “General Requirements” section which set forth the basic contractual provisions. Subsection 1.2.4.3 stated:

Contractor staff assigned to perform housekeeping service in lock-in/dedicated areas requiring total disinfection cleaning... shall be required to wear uniforms supplied by the Government. Such uniforms shall remain the property of the Government and shall not be removed from the premises. These uniforms shall be turned in as required to be laundered at Government expense.

(R4, tab 1 at 28) In accordance with this requirement, the government agreed to supply “[s]urgical garments for housekeeping employees in dedicated areas (i.e., O[perating] R[oom], PACU (Post Anesthesia Care Unit), and isolation room)” (R4, tab 1 at 52).

3. Subsection 5.2.2 of the “SPECIFIC TASKS AND STANDARDS” section of the PWS explained that the frequency of required cleaning services at the hospitals depended upon whether a space was defined either as a vital patient care area or an ancillary area. The frequencies themselves were set forth in “Technical Exhibit 3, Room/Area Identification Charts.” Specifically, this exhibit stated that housekeeping services were required seven days a week at the surgical and medical wards located on the second floor of the hospital building at Fort Eustis. (R4, tab 1 at 70-71, 167)

4. In response to the solicitation, PCT submitted a proposal which included, *inter alia*, a procedures manual. With respect to the hospital’s surgical areas, the manual stated, in pertinent part: “The cleaning standard for all surgical areas will be the

¹ We cite to the Rule 4 file as “R4, tab ____,” and to the government’s exhibits as “ex. G- ____.”

procedure of total disinfection cleaning.” The manual went on to describe the “ADDITIONAL DUTIES OF SURGICAL AREAS.” Regarding the “SECONDARY DUTIES”, the manual stated:

The housekeeper will consist [sic] of augmenting the housekeeping staff during peak workloads during lunch breaks with turnover cleaning of operating rooms. Remember, turnover cleaning will be performed in accordance with the established policies and procedures for cleaning an operating room.

The primary and secondary duties will require the housekeeping aid to still wear the standard operating room attire. When needed, protective gloves and eye wear will be provided by the operating room staff.

(R4, tab 25, Quality Control at 82-84) With respect to the procedures for daily cleaning of surgical areas, the manual stated, in part: “Flood floor with disinfectant solution within 3 to 4 feet around operating room table.” It also provided: “Roll operating table/bed and other furniture with wheels through the solution.” (R4, tab 25, Quality Control at 85)

5. PCT proposed to provide housekeeping services at the four military installations for the base period as well as four option years for a total price of \$4,311,850.80 (R4, tab 25, Price at 1).

6. On 16 December 1999, the CO forwarded a letter to PCT in which she stated, in part: “Request your office submit a cost proposal to include the 3rd floor of McDonald Army Community Hospital [Fort Eustis] to Line Item 0002 for a 12 month base period with four (4) 12 month option periods beginning February 1, 2000.... The floor will be used as a clinic, operated Monday through Friday.” The CO also stated: “Your proposal should be sent back directly to this office by January 4, 2000.” (R4, tab 26)

7. On 4 January 2000, PCT submitted a proposal to provide housekeeping services for the third floor of Building 576 in a total amount of \$368,840.76 for the base period and the four option periods (R4, tab 27 at 4). On 7 January 2000, the Army informed PCT that its proposal for the third floor was too high and needed to be revised downward (R4, tab 29). On 13 January 2000, PCT submitted a revised proposal in a total amount of \$246,245.85 for the third floor work, which reflected the deletion of a supervisory position. The Army reviewed the revised proposal and found it to be reasonable. (R4, tab 30)

8. On 21 January 2000, the CO executed the contract, with an effective date of 17 December 1999. The total amount of the contract for the base year was \$860,329.76. (R4, tab 1) This amount did not include the additional proposed work on the third floor of the hospital at Fort Eustis. Accordingly, on 30 May 2000, the parties executed bilateral Modification No. P00003, with an effective date of 22 May 2000, to incorporate this work. The square footage for housekeeping services at Building 576 was increased from 132,429 square feet to 145,115. The total price for housekeeping services under the contract was increased to \$908,683.52 for the base period. (R4, tab 4 at 1-3)

9. Neither Mr. Melvin Johnson, PCT's manager, nor any other employee of PCT conducted a pre-award site visit of Building 576 at Fort Eustis. Specifically with respect to the second floor of that building, Mr. Johnson testified that he did not conduct a pre-award site visit because he had concluded that the operating room was not part of the contract and was, therefore, not functional; however, he did not state his alleged belief to the contracting officer's representative that the operating room was not included in PCT's contract (tr. 58-60).

10. Between 10 October 2002 through 31 March 2003, the Army performed renovations to the third floor of Building 576. The work did not change the square footage of the third floor. (R4, tab 130; ex. G-3) Mr. Michael Vail, the Army's facility engineering technician at Fort Eustis during the term of PCT's contract, testified extensively about this project. The first area to be renovated was the medical records area which was subdivided from one large room to five smaller rooms. As part of the work, Mr. Vail's crew took out the medical cabinets and "installed walls and put in doors, and we did the tiling in that area." This work "took at least 30 days to complete." During that period, the entire medical records area was blocked off, and PCT did not perform any cleaning there. (Tr. 161-63)

11. The second renovation project which took place on the third floor was in the triage area. Regarding this work, Mr. Vail testified:

Okay. And basically the only thing we did here was extend the wall and put in a door...and we took out [a] little partition right in the center...[and] we just made that one office.

Mr. Vail also testified that, like the medical records area, the triage area was closed off during the renovation work which took about 21 days to complete. (Tr. 163-65)

12. As part of a third renovation, the Army split an area in half and installed a door. This work area was also sealed off and could not be cleaned. The work encompassed 15 days. The fourth renovation took place in a general storage area which was divided into three offices. This work took approximately 21 days to complete. The

final renovation took place in a waiting area. Mr. Vail testified: “We developed two small triage areas....[a]nd we put in an office, and also made a little reception desk for the patients to see all the doctors....” This work encompassed 15 days. (Tr. 164-66)

13. Mr. Vail testified further that the Army did not perform any renovations to the large waiting area on the third floor. It neither added nor took away any chairs from that area (tr. 167).

14. On cross-examination, Mr. Vail testified that the renovation did not lead to any additional Army personnel working on the third floor (tr. 170-71). On redirect examination, Mr. Vail testified that there were actually fewer chairs to be cleaned in the waiting areas after the renovation (tr. 174).

15. On 7 January 2004, PCT submitted a certified claim to the CO in a total amount of \$131,296.27 (R4, tab 100). The claim was later amended to state a total amount of \$161,000 (R4, tab 127). As presented, the claim had two parts. Firstly, PCT alleged that the operating rooms on the second floor of Building 576 were not included in the contract. Because it provided cleaning services for the operating rooms, PCT concluded that it was entitled to additional compensation. (R4, tab 100, vol. I at 2) Further, PCT argued that it had incurred expenses for added cleaning work resulting from the renovations the army had performed on the third floor of Building 576. As part of its claim, PCT stated that “adding personnel with additional desks, chairs, trash cans, and bathroom usage increase [sic] our work output” (R4, tab 100, vol. I at 8).

16. On 14 January 2005, the CO denied PCT’s claim in its entirety. She concluded that the operating rooms were included in the contract and that the renovation project did not result in an increase in PCT’s work (R4, tab 127). This appeal followed.

DECISION

Regarding PCT’s first claim, it is obvious that the operating rooms in the hospital building at Fort Eustis were included in the parties’ contract. There are numerous references in the PWS and Technical Exhibit 3 which refer to the operating rooms and the surgical areas on the second floor (findings 1-3). Just as importantly, PCT’s own proposal, which was part of the executed contract, referred specifically to the surgical areas and the operating rooms (findings 4-5). The contract thus clearly required that PCS clean these areas. Therefore, its claim must be denied.

With respect to PCT’s second claim, its premise is that the result of the third floor renovations was an increase in Army personnel working on that floor and a concomitant increase in its cleaning duties. Record evidence does not support these allegations. Initially, we simply note that PCS refers to no evidence which supports its increased

personnel claim. Further, Mr. Vail, the Army official who supervised the renovation, testified specifically that the renovation did not result in an increased number of personnel working on the third floor (finding 14). On this basis, PCT's second claim must also fail.

CONCLUSION

The appeal is denied.

Dated: 1 March 2011



MICHAEL T. PAUL
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur



MARK N. STEMPLER
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. 54932, Appeal of PCT Services, Inc., rendered in conformance with the Board's Charter.

Dated:

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