

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
M. L. Energia, Inc.) ASBCA No. 55947
)
Under Contract No. NAS10-98025)

APPEARANCE FOR THE APPELLANT: Dr. Moshe Lavid
President

APPEARANCES FOR THE GOVERNMENT: Vincent A. Salgado, Esq.
NASA Chief Trial Attorney
Dawn L. Oliver, Esq.
Timothy M. Bass, Esq.
Assistant Chief Counsel
Kennedy Space Center, FL

OPINION BY ADMINISTRATIVE JUDGE SHACKLEFORD
ON APPELLANT'S MOTION FOR RECONSIDERATION

On 24 August 2012, appellant M. L. Energia, Inc. (Energia) filed a timely motion for reconsideration of our decision dated 24 July 2012. Energia filed an amendment to the motion for reconsideration on 5 September 2012. The government (NASA) filed an opposition to the motion for reconsideration and a motion to strike the amendment to the motion on 27 September 2012. We denied the motion to strike and allowed NASA time to reply to the amendment which they did on 31 October 2012. We granted appellant leave to respond to the NASA reply to the amended motion which we received on 3 December 2012.

BACKGROUND

1. While familiarity with our decision (*M. L. Energia, Inc.*, ASBCA No. 55947, 12-2 BCA ¶ 35,110) is presumed, a brief summary is in order. Energia was awarded a Small Business Innovation Research contract with respect to photo-chemical remediation of sites contaminated with hazardous solvents at the Kennedy Space Center, Florida. The contract was for a firm fixed-price of \$597,960 and required delivery of several reports, including a final report with certain specific information to be included in said reports. Over the life of the contract, appellant was paid \$444,345, leaving a balance of \$153,615.

2. The contracting officer determined to make an equitable price reduction under the contract in the amount of \$153,615. Appellant appealed that decision and we heard and decided entitlement only, meaning we decided whether NASA was entitled to take a

reduction in price. We did not decide the quantum, meaning by how much NASA could equitably reduce the contract price.

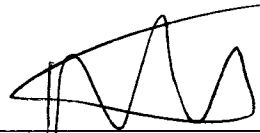
3. The most cogent argument proffered by appellant is that we did not determine the amount of the equitable adjustment. NASA, in its opposition to the motion, sets forth the typical rationale for the Board granting reconsideration and finds appellant's arguments lacking. More to the point made by Energia, NASA argues (a) that the Board has already ruled that appellant failed to demonstrate entitlement to any claim for additional work, (b) that where entitlement is denied, determining quantum is an unnecessary waste of resources and (c) that there is no reason to determine quantum after entitlement has been decided.

DISCUSSION

This was a government claim and we found the government entitled to an equitable reduction in contract price. We did not decide how much of a reduction. We should have remanded the case to the parties to negotiate quantum. The arguments proffered by the government presuppose a contractor claim and, as we have found, this is a government claim. To the extent appellant makes other arguments about our findings of fact or our conclusions, we are unpersuaded that any of them rise to a level requiring reconsideration.

Accordingly, we grant appellant's motion for reconsideration to the extent that we remand the appeal to the parties to negotiate and resolve quantum. If negotiations fail, the parties may request the appeal be reinstated for determination of quantum.

Dated: 8 April 2013



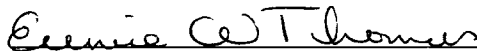
RICHARD SHACKLEFORD
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



MARK N. STEMLER
Administrative Judge
Acting Chairman
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. 55947, Appeal of M. L. Energia, Inc., rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals