ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --	)	
	)	
Manhattan Construction Company	)	ASBCA No. 52432
	)	
Under Contract No. NAS5-35163	)	

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OPINION BY ADMINISTRATIVE JUDGE PAGE
ON THE GOVERNMENT'S MOTION TO DISMISS
FOR LACK OF JURISDICTION

This appeal challenges NASA's denial of a claim to recover an equitable adjustment of $1,100,045.70 for work performed under a construction contract. The Government has moved to dismiss the appeal, in part, for lack of jurisdiction, arguing that appellant's demand for a $125,000 painting allowance was never the subject of a cognizable claim complying with the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, as amended.

FINDINGS OF FACT FOR PURPOSES OF THE MOTION

Contract No. NAS5-35163 for the construction of the Earth System Science Building at the NASA/Goddard Space Flight Center was awarded to Manhattan Construction Company (MCC, contractor or appellant) on 22 August 1995. The contract contained various standard clauses, including FAR 52.233-1 DISPUTES (MAR 1994) which provided in part:

> (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain,

> the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. . . . .

(R4, tab 1)

Appellant submitted on 5 March 1999 its claim totaling $1,100,045.70 for additional costs associated with duct fire stopping allegedly in excess of contract requirements. MCC specifically alleged entitlement, *inter alia*, to a painting allowance of $125,000.00, explaining that "[d]irect costs are not available for the painting work due to our subcontractor's inability to provide the information in proper form. We have included our evaluation of the painting cost as an allowance." (R4, tab 81) Based on our examination of appellant's claim, we conclude that the "allowance" was an estimate of the additional painting costs being sought.

By final decision dated 13 August 1999, the Government denied appellant's claim -- including the $125,000 painting allowance -- *in toto*. In doing so, the Government noted that the $125,000 painting allowance sought by appellant was "not substantiated." (R4, tab 83) On 22 October 1999, appellant filed an appeal with this Board that challenged the Government's final decision in its entirety. The Government has moved to dismiss the appeal in part, arguing that we lack jurisdiction to consider appellant's entitlement to the $125,000 painting allowance demanded. The basis for the Government's motion is that the painting allowance is presented as an estimate only and was never reduced to a "sum certain" prior to NASA's issuance of a final decision. The Government asserts that "[w]ithout more, the NASA contracting officer was unable to meaningfully evaluate the allowance claimed by Manhattan for said work." (Answer at 5)

In its response to NASA's motion to dismiss, appellant does not attempt to argue that the painting allowance, as originally presented for NASA's consideration, was properly quantified. Instead, appellant simply requests that the Board dismiss that portion of the appeal pertaining to the painting allowance without prejudice to submission of a proper claim for those costs. In reply, NASA argues that the portion of the appeal relating to the painting allowance should be dismissed with prejudice.

DECISION

The CDA, as implemented by the Disputes clause, requires a claim for the payment of money to state a sum certain. Appellant's allegation of extra costs associated with duct fire stopping provided the Government with notice of the basis of the claim. MCC acknowledged its inability to provide direct costs, but included a specific dollar amount as its evaluation of the painting cost as part of its overall demand for payment of money as a matter of right. Although the costs asserted as the painting allowance were not

documented, MCC sought a sum certain. MCC met the minimal requirements of a claim as set forth in the Disputes clause of the contract. We find this claim, although containing an estimate, to be adequate for the purposes of the CDA.

It is well settled that inclusion of an estimate does not disqualify a claim for jurisdictional purposes provided a sum certain for the total amount of the claim is stated. *Servidone Construction Corporation v. United States*, 931 F.2d 860 (Fed. Cir. 1991). "All that is required is that the contractor submit in writing to the contracting officer a clear and unequivocal statement that gives the contracting officer adequate notice of the basis and amount of the claim." *Contract Cleaning Maintenance, Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1987), citing *Tecom, Inc. v. United States*, 732 F.2d 935, 936-37 (Fed. Cir. 1984) and *Metric Construction Co., Inc. v. United States*, 1 Cl. Ct. 383, 392 (1983). It is permissible for claims to include the contractor's estimate of the cost of part of the work. As the Board noted in *T. Iida Contracting, Ltd.*, ASBCA No. 51865, 00-1 BCA ¶ 30,626 at 151,185:

> While a valid claim must include a "clear and unequivocal statement that gives the contracting officer adequate notice of the basis and amount of the claim," it need not contain additional supporting documentation or detailed evidence of the alleged operative facts. "The contracting officer's desire for more information [does] not change the 'claim' status of the contractor's submission." *See H.L. Smith*, 49 F.3d at 1565; *John T. Jones Const. Co.*, ASBCA No. 48303, 96-1 BCA ¶ 27,997 at 139,839.

The Government's motion to dismiss the painting portion of the appeal is based upon the misconception that a proper claim could be partly in a sum certain, and partly not. This is incorrect. The entire claim is either in a sum certain, or it is not. A single claim may be comprised of many components of quantum, as in this case where several trades allegedly were affected by a change to the contract. To the extent that the appeal arose from a single claim before the contracting officer relying upon the same operative facts, it is a unified appeal and is not subject to dismissal in part for lack of jurisdiction. *See Zinger Construction Co., Inc.*, ASBCA No. 39873, 90-2 BCA ¶ 22,782.

CONCLUSION

NASA's motion to dismiss the appeal in part for lack of jurisdiction is denied. Because we deny the Government's motion, it is unnecessary to reach the matters raised by appellant's response.

Dated: 1 September 2000

REBA PAGE
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

MARK N. STEMPLER
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. 52432, Appeal of Manhattan Construction Company, rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals