ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --	)	
	)	
Contel Advanced Systems, Inc.	)	ASBCA Nos. 49071, 49164, 49772
	)	
Under Contract No. N60530-90-D-0023	)	

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OPINION BY ADMINISTRATIVE JUDGE HARTY

Contract No. N60530-90-C-0023 (redesignated N60530-90-D-0023 in January 1996) was awarded by the Navy's Air Warfare Center Weapons Division, China Lake, CA in September 1990 to Contel Advanced Systems, Inc. (CASI). The contract required CASI to design, install, and maintain a new, state-of-the-art digital switching system known as the Center Telecommunications System (CTS). Performance was divided into two phases: (1) the implementation phase; and (2) an operation, maintenance and administration phase. The present appeals[*] involve the implementation phase of the contract. They cover a contractor claim and a Government claim concerning the number and type of circuits and related wiring required by the contract and installed by CASI. Only entitlement is to be decided.

CASI claims that it installed more inside plant or ISP wiring than specified in the contract and seeks $432,305. It argues that the contract as awarded unambiguously required the installation of only 10,838 lines or circuits and associated wiring and seeks

[*] The other appeals are ASBCA Nos. 49072, 49073, 49074, 49075, 49076, 49603, 50648, 50649, 51048, 51049.

compensation for circuits and associated wiring beyond this baseline. ASBCA No. 49071 was filed on the basis of a "deemed denial" (41 U.S.C. § 605(c)(5)), while ASBCA No. 49164 is a protective appeal filed from a subsequent contracting officer's final decision denying the claim on the basis that the contract required CASI to install a baseline requirement of 11,000 lines or circuits with universal faceplates and associated wiring.

We deny ASBCA No. 49071 in part because the contract language in question is patently ambiguous, CASI failed to seek clarification as it was bound to do and, in any event, has not established that it relied on the interpretation that it has advanced. However, we sustain the appeal in part because CASI has established that it installed more ISP than was required under the contract even with a baseline of 11,000 lines or circuits with universal face plates and associated wiring. The matter is remanded to the parties for the negotiation of quantum in connection with ASBCA No. 49772. We consider ASBCA No. 49164 to be duplicative and dismiss it.

ASBCA No. 49772 is an appeal from a Government claim that it is entitled to a credit because CASI installed less expensive "RJ" and "B" faceplate type circuits and wiring in certain locations instead of the more expensive universal faceplate lines or circuits and associated wiring. The Government's claim is based on the assumption, which we affirm in ASBCA No. 49071, that CASI was required to install 11,000 lines or circuits with universal faceplates and associated wiring. Under the Government's analysis, when the cost of the "RJ" and "B" type circuits is subtracted from the cost of the more expensive universal faceplate lines or circuits and associated wiring, the Government is entitled to a net credit of $64,809. CASI asserts that even if it was required to install 11,000 universal faceplate lines or circuits and associated wiring, it is still entitled to an affirmative recovery.

We deny CASI's appeal because the Government has established its entitlement to an adjustment for CASI's installation of less costly circuits. ASBCA No. 49772 is remanded to the parties for the negotiation of quantum consistent with this decision and our opinion in ASBCA No. 49071.

FINDINGS OF FACT

Background

The Government issued the original Request for Proposal (RFP) leading to Contract No. N60530-90-C-0023 on 22 April 1987 (SR4, tab 9 at A-02137). The RFP provided that "[t]he System Installation of the initial CTS, CLIN 0001, shall be performed in accordance with the SOW [Statement of Work] (Attachment 1), SRS [System Requirements Specification] (Attachment 2), and Initial Installation (Attachment 3)" (SR4, tab 1, section C, at 12). The cable distribution system required was divided into the outside plant cable, or OSP, and the inside plant cable, or ISP (tr. 1/57). The SOW required the contractor to

"[i]nstall the necessary inside wiring plant for the CTS" (SR4, tab 1, attachment 1, SOW, ¶ 3.6.2 (C), at 34).

Attachment 3, Initial Installation (Exhibit B), contained the pricing schedule. It listed Contract Line Item Numbers (CLIN) for the major areas of effort required, including B004 for ISP. The requirement was identified as "Inside Cable Plant" and the quantity and unit called for was "1 Lot." The parties have recognized that it is necessary to look elsewhere in the solicitation to give meaning to the requirement for "1 Lot" of ISP. There are three separate areas which have been highlighted by one or the other of the parties as a source for determining the ISP wiring requirement.

Pertinent Provisions

One area is Attachment 3 itself. CLIN B007EV and CLIN B007EVaa called for "Universal wiring faceplates, including all connectors, caps, and box (wall plate style)" and "Universal wiring faceplates, including all connectors, caps, and box (styled for modular furniture)," for a total of 10,000 universal faceplates. A universal wiring faceplate is a six position faceplate that accommodates six different types of jacks (tr. 1/69). The number of universal faceplates was later increased to 11,000 by Amendment No. 8 issued 9 June 1989 (SR4, tab 1, attachment 3, Initial Installation (Exhibit B), at 2, 11; AR4, tab 3 at R-00157, 00162; tr. 7/230-32).

A second area is the SRS, which required "provisioning" for 11,000 universal faceplates. Section 3.2.0 of the SRS reads, in pertinent part, as follows:

> The CTS shall be capable of supporting a minimum of data only, voice only, and/or voice and data subscribers as shown in Table 1, Traffic Capacity. The CTS shall be:
>
> 1. Installed to support the minimum number of voice/data subscribers listed in Table 1.
>
> 2. Expandable to support the maximum number of voice/data subscribers listed in Table 1.
>
> 3. Installed to support the minimum number of input/output data ports as listed in Table 1 Notes.
>
> 4. Expandable to support the maximum number of input/output data ports listed in Table 1 Notes.
>
> . . . .

> NOTES:
>
> The number of lines (line directory numbers) is estimated to be the number of voice activity subscribers.
>
> It is estimated that there will be 1.6 telephones per each line.
>
> *The inside cable plant for the initial installation shall be provisioned for 11,000 universal wiring faceplates.*
>
> 1% of the data activity subscribers are estimated to be data only.
>
> *In addition, 1000 input/output data ports to LAN and data/computer resources are estimated for initial installation.* Distribution in the population centers is estimated to be the same proportion as the data activity subscribers. (Emphasis added)

(SR4, tab 1, SRS, attachment 2, section 3.2.0, at 18-19) The input/output data ports are referred to as special service circuits (SR4, tab 1769 at 25322).

The third area is Attachment 8. Amendment No. 8 to the RFP, in addition to increasing the number of universal faceplates from 10,000 to 11,000, also added Attachment 8 to the solicitation documents (SR4, tabs 2, 24 at A-02032). Attachment 8, entitled "Building/Telephone Line Inventory," included a list of existing facilities, at specific map coordinates, requiring telephone service. Attachment 8 consists of 20 pages, listing building numbers, map locations and the types of telephone lines or circuits in the existing telephone system. These were divided into three separate columns as follows: CTS Lines, 446 Contractor and Special Circuits. Special circuits were defined as "Non-switched cable pairs that provide intrusion alarms, equipment alarms, data transmission, etc." The 446 contractor lines were defined as "Cable pairs provided from the Center demarcation point to the building demarcation point for non-government occupants," and CTS lines were defined as "Lines serviced by the switch." The total was defined as "Cable Plant Requirements." (SR4, tab 2, attachment 8) CASI added the three columns together, coming up with 10,838 circuits according to one of its witnesses, although the columns total to 10,845. The difference is attributed in CASI'S brief to an unidentified duplication in the number of buildings (app. br. at I-1, n.1). For the purposes of our discussion, we have used the 10,838 circuits that CASI has settled on in its claim as the total baseline requirement, with 9,077 of the circuits being CTS lines, or those serviced by the switch.

<u>CASI's Proposals</u>

CASI's Initial Proposal CASI submitted its first proposal in response to the RFP in September 1987 (tr. 7/229). Mr. George Hardy was responsible for preparing the pricing for the ISP element of CASI's proposal. He prepared the pricing for the initial proposal and all revisions. His effort for the initial proposal was reviewed by Mr. William Manning. His later efforts were reviewed by Mr. Jafar Babaie, CASI's proposal manager. Mr. Hardy testified that in order to quantify the ISP wiring requirement of "1 Lot" as specified in CLIN B004, he relied on the number of universal faceplates specified in CLIN B007. In 1987, before the issuance of Amendment No. 8, the number of universal faceplates was specified as 10,000. (Tr. 7/228-30)

After Amendment No. 8 added Attachment 8 to the RFP in June 1989, one offeror believed there were conflicts between the information indicated on Attachment 8 and information provided on another attachment to the RFP. The offeror submitted the following question to the Government:

> Question: Attachment 8, Building/Telephone Line Inventory and Attachment 13, General Development and Cable Maps General Development Maps have a number of conflicts. We are working around these discrepancies but want to be sure nothing critical has been omitted or that any buildings not shown are actually far from where they are listed as being.

(SR4, tab 19 at A-14651)

The Government responded to this question in Amendment No. 10 dated 7 July 1989. The response cautioned offerors about the accuracy of Attachment 8 in the following terms:

> Answer: The "NOTES" page for Attachment 8 has been amended to include, "The Building/Telephone Line Inventory contains the most current information available to the Government. The Government cannot guarantee the complete accuracy of the information."

(SR4, tab 19 at A-14651)

CASI's 1989 Revised Proposal After receipt of CASI's initial proposal, the Government posed written questions to CASI to clarify parts of the proposal. One question addressed the quantity of ISP that CASI would provide under the "1 Lot" pricing of CLIN B004:

> QUESTION:

> The Price Proposal for line item B004 places a limitation of 150,000 feet on the inside cable plant to be provided. The initial system shall include all necessary inside wiring to complete the system design. Remove this restriction.

(SR4, tab 27 at 315)

CASI included its response to this question and others along with its revised proposal, which was submitted in August 1989. CASI's response described its methodology of ISP pricing and indicated that it had priced CLIN B004 in its 1987 proposal based on the number of faceplates, which at that time was 10,000, as follows:

> The pricing assumption for line item B004 was actually based on 1,500,000 feet each, not 150,000 feet each. This was derived from the following assumptions:
>
> -Maximum faceplates, 10,000.
> -Each 4-pair shielded and non-shielded cable had to be installed new.
> -Average length of each cable, 150 feet.
>
> The Pricing Assumption D for line item B004 was not intended to be a restriction on the amount of 4-pair shielded and non-shielded cable to be installed during the initial
>
> system installation. This assumption was made only for the purpose of showing pricing rationale to the Government.

(SR4, tab 27 at 315)

In other words, as Mr. Babaie explained at the hearing, CASI had forecast 150 feet of wire per wire run and determined the wiring requirement by multiplying the number of universal faceplates required, which at the time was 10,000 faceplates, for a total of 1,500,000 feet (tr. 1/225, 237).

Mr. Hardy prepared CASI's pricing for CLIN B004 in the revised proposal. Mr. Hardy acknowledged that there was some confusion as to what section of the contract might indicate the quantity of ISP for pricing purposes in view of the addition of Attachment 8. He testified that in preparing CASI's 1989 proposal, he now looked at three different "factors" in the solicitation requirements as indicating quantities for the "1 Lot" specified under CLIN B004. These factors were: (1) the requirement to provide wiring for 11,000 universal faceplates (increased from 10,000 by Amendment No. 8); (2) the

requirement for 1.6 telephones per line listed in SRS §3.2.0; and (3) Attachment 8. He acknowledged that there would be a different quantity depending on which of the three factors were relied upon. He testified that it was a "shot in the dark" to decide which of the three factors to rely on, acknowledging that to some extent it was a guessing game. In the end he based his pricing on two of the factors. He used Attachment 8 for pricing the labor component of CLIN B004, while he priced the material requirement on the basis of 11,000 universal faceplates. He was not certain what Mr. Babaie did with his proposed pricing. (Tr. 7/229-33)

Mr. Babaie confirmed that there was internal "confusion" and even "argument" within CASI during the preparation of the revised proposal about how to determine the quantity of ISP required under CLIN B004. Mr. Babaie testified that he personally interpreted "1 Lot" under B004 to mean ISP for 10,838 lines or circuits, based on Attachment 8 to the RFP. He also testified, however, that others on the proposal preparation team disagreed with his interpretation. These others interpreted "1 Lot" to mean ISP wiring and cable for 11,000 lines or circuits, based on the requirement for 11,000 universal faceplates. However, despite his personal view, Mr. Babaie testified that "[w]hen we did our ultimate estimate, normally when you round up your figure, the one lot that we had . . . calculated 1.65 – 1,650,000 feet was based [o]n the round figure of 11,000 anyway." (Tr. 2/164-70) He also testified that CASI had "forecasted approximately 11,000 units" and "forecasted do[ing the work] with six teams" (tr. 1/237-38).

CASI's February 1990 Best and Final Offer (BAFO) CASI revised its 1989 proposal with a BAFO in February 1990. The BAFO made no change in CASI's final proposed price for CLIN B004 from the 1989 proposal (SR4, tab 6; tr. 2/170). The technical proposal reflected CASI's intention to install ISP wiring for 11,000 universal faceplates:

> 2.1.2.8 Universally Wired Cable Plant Implementation
>
> During initial installation and in accordance with the Station Design Plan (SDP), Contel will install eleven thousand universal wiring faceplates with connectors for voice/low speed data, dedicated low speed data (19.2 Kbps), high speed data (10 Mbps) and video. . . .
>
> Each outlet will be wired from the faceplate to a wiring closet . . . .

(SR4, tab 3, CASI's Technical Proposal at I.2-46)

CASI's Internal Planning Before Contract Award

By letter dated 18 May 1990, Digital Equipment Corporation (DEC) submitted a best and final offer to CASI for a subcontract for ISP work on the project. DEC's letter summarized the work that DEC was to perform in order "[t]o provide for a clear understanding of the statement of work that was bid to . . . ." DEC's summary stated that DEC understood from CASI that it was to provide labor necessary to provide ISP circuits for "11,000 (eleven thousand) station locations." (SR4, tab 42 at A-00472) By letter to DEC dated 18 September 1990, CASI acknowledged DEC's best and final offer indicating the price for labor necessary to provide ISP "for 11,000 station locations." CASI informed DEC of certain additional requirements regarding the type of cable and faceplates, asked for DEC's pricing with these additions, and twice more referenced the amount of faceplates as 11,000. (SR4, tab 70)

Contract Award

The contract was effective as of 24 September 1990 (SR4, tab 1 at 1). It was signed, on behalf of CASI, by its president, Mr. James Miles, who did not testify at the hearing. CASI's final proposal, which had also been signed by Mr. Miles, was incorporated by reference into the contract (SR4, tab 1 at 1). The final proposal included CASI's 1989 proposal, as revised by CASI's BAFO of February 1990, which had not changed the 1989 proposal price for CLIN B004 (SR4, tab 3; tr. 2/170). The contract included FAR 52.233-1 DISPUTES (APR 1984) ALTERNATE I (APR 1984) and FAR 52.243-1 CHANGES-FIXED PRICE (AUG 1987) ALTERNATE II (APR 1984), FAR 52.215-33 ORDER OF PRECEDENCE (JAN 1986) and FAR 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 1984).

CASI admits that it did not submit any inquiry to the Government to clarify the requirement for "1 Lot" of ISP required under B004 before submitting its BAFO (app. br., ex. 5 at 6-7).

CASI's Representations To The Government Following Contract Award

After contract award, in a letter of 8 January 1991 regarding type of cable, CASI indicated to the Government that it had based its pricing for CLIN B004 on wiring 11,000 stations. CASI's letter specifically described how CASI had priced B004, as follows:

> CASI originally proposed a composite cable. This cable was composed of 4-pair, 24 gauge non-shielded for voice and 4-pair, 24 gauge shielded for data.
>
> The average station length was estimated at 150 feet per run and cost was 8 cents per foot. The SRS specifies wiring of 11,000 stations times an average of 150 feet per station, equaling a

> total of 1,650,000 feet of wire, which will be required to satisfy the SRS.

(SR4, tab 226)

CASI's project status report dated 6 March 1991 reflects CASI's assumption of a direct correlation between the required 11,000 universal faceplates and the required quantity of ISP, as follows:

> Awarded contract to Splice-Co for installation of approximately 4,000 of the anticipated 11,000 faceplates and associated ISP wiring.

(SR4, tab 335 at G-00227)

Cutover and Systems Acceptance

"Cutover" or "the transfer of telecommunications traffic from the existing system to the newly installed Center Telecommunications System," occurred on 10 April 1992 (AR4, tab 695; tr. 1/210). System Acceptance Testing occurred and the contracting officer accepted the CTS, and all of its component parts, including ISP, on 11 May 1992, with a punchlist provision (SR4, tab 2027, Modification No. P00040 at 2; AR4, tab 695; tr. 5/65).

The parties had agreed to transfer the special circuits after cutover (AR4, tab 124 at 4; 1/164-65). By memorandum to CASI dated 20 July 1992, the Government referred to the requirement in the SRS for wiring 1000 special service circuits in addition to the 11,000 universal faceplates. The Government noted:

> [Section 3.2 of the System Requirements Specification] states the following: "The inside cable plant for the initial installation shall be provisioned for 11,000 universal faceplates. . . . In addition, 1000 input/output data ports to LAN and data/computer resources are estimated for initial installation. . . ."

(SR4, tab 1769 at Bates 25322)

By letters to CASI of 27 August 1992, the Government expressed concern that CASI appeared to be disagreeing that the contract required CASI to provide 1000 "special circuits" as part of the implementation phase. The Government's letters asked CASI to advise it if CASI believed that the special circuits were "over and above the current requirements of the contract." (SR4, tabs 1573, 1574) CASI responded to the Government's letters of 27 August 1992 on 3 October 1992, agreeing that the contract

required ISP wiring for 11,000 universal faceplates, plus an additional 1,000 special service circuits. CASI stated:

> Under implementation portion of the contract, CASI was required to wire 11,000 universal faceplates and 1,000 special service circuits to replace the existing telephone system on the base. CASI believes that those 12,000 universal faceplates and special service circuits have been installed and any over that amount are additional requirements which will be identified, invoiced and added as a separate item to the current LTOP [Lease to Ownership Price].

(SR4, tab 1605)

CASI's Claim and the Government's Claim

CASI submitted a properly certified claim in the amount of $432,305 for "Inside Plant Circuit Installation" on 1 February 1994. Based on Attachment 8, CASI alleged that the contract only required the installation of 10,838 circuits. It acknowledged the disclaimer in Attachment 8 that the inventory was the "most current information available" to the Government and that the Government "cannot guarantee the complete accuracy of the information." It maintained, however, that CASI had to prepare its proposal for the ISP requirements (Attachment 3, Item No. B004) based on the specific circuit requirements identified in Attachment 8. CASI asserted that "[n]o other solicitation document identified the Navy's ISP requirements." (SR4, tab 2028)

On 17 August 1995, CASI filed an appeal under the Contract Disputes Act on the basis of a "deemed denial" and we have jurisdiction on this basis. 41 U.S.C. § 605(c)(5). The contracting officer issued his final decision on 29 August 1995, denying CASI's ISP claim and asserting a related Government claim against CASI. The contracting officer concluded that the contract required CASI to provide and install 11,000 universal faceplate circuits and associated wiring. He concluded that while CASI had actually provided and installed more than 11,000 ISP circuits, it had installed a number of less expensive "RJ" and "B" jack type circuits. He determined that the Government was entitled to a credit of $64,809 for CASI's provision of the less expensive ISP circuits. (SR4, tab 2034)

On 15 September 1995, CASI filed a protective appeal with respect to its own claim (ASBCA No. 49164) and appealed the Government's claim (ASBCA No. 49772).

DISCUSSION

ASBCA No. 49071 – Appellant's Claim

Contract interpretation begins with the plain language of the agreement and must be aimed at construing the agreement in a manner that effectuates its spirit and purpose. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991). The contract must be read as a whole, giving effect to all of its provisions. An interpretation which leaves a portion of the agreement "useless, inexplicable, inoperative, void, insignificant, meaningless or superfluous" or in conflict with another portion of the agreement should be avoided unless no other reasonable interpretation is possible. *Hol-Gar Mfg. Corp. v. United States*, 351 F.2d 972, 979 (Ct. Cl. 1965). *See also Fortec Constructors v. United States*, 760 F.2d 1288, 1292 (Fed. Cir. 1985).

CASI argues that the contract is unambiguous (app. reply br. I-4-I-9). Counsel urges that under the parol evidence rule, we need look no further than Attachment 8 to conclude that the "1 Lot" ISP requirement of CLIN B004 of the contract translated into a clear and unambiguous requirement for 10,838 wiring runs.

Counsel's argument fails to account for the conflicting signals sent by the other provisions of the contract and received by its own witnesses, as well as CASI's own admission during performance that it believed the baseline was 11,000 universal faceplates and wiring, apart from the 1,000 special service circuits that CASI's representatives recognized were "[i]n addition." Counsel makes no effort to harmonize these conflicts and we cannot ignore them.

To us, when the contract is read as a whole, the ISP baseline requirement is patently ambiguous. In this context the parol evidence rule is no barrier. *E.g., Sylvania Elec. Prods., Inc. v. United States*, 458 F.2d 994, 1005 (Ct. Cl. 1972) ("The parol evidence rule is . . . no bar to the use of the oral statements of the parties during negotiations, in aid of the interpretation of ambiguous or uncertain clauses in written agreements.").

A contract provision is ambiguous if it is susceptible of two different yet reasonable interpretations, each of which is consistent with the contract language and the other provisions of the contract. If the ambiguity would be apparent to a reasonable person in the position of the party seeking to rely on the ambiguity, it is "patent." If the ambiguity is patent, then the party seeking to rely on the ambiguity is obliged to inquire. Failure to inquire will bar recovery. *Eg., Lockheed Martin IR Imaging Systems, Inc. v. West*, 108 F.3d 319, 322 (Fed. Cir. 1997); *Beacon Constr. Co. v. United States*, 314 F.2d 501 (Ct. Cl. 1963).

CLIN B004 defined the amount of inside cable wiring as "1 Lot." In looking only to Attachment 8 for a definition, CASI fails to account for the SRS and CLINS B007EV and B007EVaa. The SRS specified that the initial inside cable wiring was to be "provisioned for 11,000 universal wiring faceplates" plus 1,000 special service circuits. CLINS B007EV

and B007EVaa as amended required 11,000 universal faceplates. These provisions would be meaningless if we accepted appellant's argument that only Attachment 8 controlled the baseline amount of required wiring. Moreover, Attachment 8 was the Government's best estimate of the number of telephone lines or circuits in the *existing system.* Since one of the objects of the contract was a new telephone system, it is not surprising that the Government might require the installation of more or different inside plant circuits. For this reason, we do not see any necessary inconsistency, as alleged, in the Navy's position that Attachment 8, while setting the baseline number of buildings requiring outside plant cabling (as both parties agree in connection with ASBCA No. 49073), was not the baseline for ISP wiring (ASBCA No. 49073, Govt. br. at PFF 4; app. br. at PFF 2, 3; ASBCA No. 49071, app. reply br. at I-7, 8).

Moreover, it is clear that when CASI's offer was being prepared, its representatives did not find the same certainty that counsel now urges on us. Mr. Hardy's "shot in the dark" with respect to ISP pricing and Mr. Babaie's candid acknowledgment of confusion and argument about the requirements for ISP under CLIN B004 underscore the obvious problem in interpreting the ISP baseline requirement – even without attempting to account for the 1,000 special service circuits that CASI acknowledged in October of 1992 it was required to provide. An inquiry to the contracting officer was required in these circumstances.

Ironically, the testimony of Messers. Hardy and Babaie, two key individuals involved in the preparation of CASI's proposals, indicates that CASI may have "guessed" correctly, at least with respect to the number of universal faceplate circuits. However, a correct guess would undermine any merit that CASI's claim might otherwise have had. A contractor's claim fails as a matter of law if it cannot show that it relied on the proffered interpretation in preparing its offer. *See Fruin-Colnon Corp. v. United States*, 912 F.2d 1426 (Fed. Cir. 1990); *Randolph Engineering Co. v United States*, 367 F.2d 425 (Ct. Cl. 1966); *Santa Fe Engineers, Inc.*, ASBCA No. 32448, 89-3 BCA ¶ 22,024.

Accordingly, we deny the appeal in part; we sustain the appeal in part because CASI has established that it installed more ISP than was required under the contract even with a baseline of 11,000 lines or circuits with universal faceplates and associated wiring. The matter is remanded to the parties for the negotiation of quantum in connection with ASBCA No. 49772.

ASBCA No. 49772 – The Government's Claim

ASBCA No. 49772 is an appeal from a Government claim that after evaluating the extra ISP effort claimed by CASI and verifying the ISP installed, the Government is entitled to a credit of $64,809 because CASI installed less expensive "RJ" and "B" type circuits and wiring in certain locations instead of the more expensive universal faceplate lines or circuits and wiring. The Government's claim is based on the assumption, which we have

affirmed in ASBCA No. 49071, that CASI was required to install 11,000 universal faceplate circuits or lines and associated wiring as the baseline requirement. It also takes into account ISP circuits and wiring for which CASI received compensation under contract Modification No. P00010.

It is undisputed that after award the parties recognized that not all circuits and types of equipment required the installation of universal wiring. Changes were made. Some were compensated for by contract Modification No. P00010; others were not (SR4, tab 2027; tr. 7/240-41). The Government agrees that CASI installed more ISP than required under the contract, although not as much more as CASI alleges (Gov't br. at I-3). Both agree that CASI would be entitled to an equitable adjustment for the additional circuits it installed, taking into account Modification No. P00010. CASI also acknowledges the Government's right to an adjustment for the cost savings associated with CASI not having to install 11,000 universal faceplate type lines or circuits.

In addition, CASI admits that the contract as awarded required all ISP circuits/lines to be universal type wiring runs, with no provision being made for "RJ" or "B" type wiring runs. CASI also admits that circuits with "RJ" or "B" type jacks are less expensive than universal face plate circuits, although it does not admit that the wiring runs require less labor to install than universal faceplate type wiring runs. (App. br., ex. 5 at 7-9) CASI has also conceded that the Government was entitled to 1,000 special service circuits apart from the 11,000 universal faceplate circuits (SR4, tab 1605).

Under the Government's analysis, when the cost of the "RJ" and "B" type circuits is subtracted from the cost of the more expensive universal circuits and wiring, the Government is entitled to a credit of $64,809. CASI takes exception to the contracting officer's conclusion. It maintains that even if the baseline requirement is as the Governments asserts, CASI is still entitled to recover for additional extra ISP work and the net result would not be a credit to the Government.

The determination of the "net result" is reserved for quantum (app. reply br. at I-21 n. 12; Gov't br. at I-25, I-37 n. 23). However, we deny CASI's appeal because the Government has established its entitlement to an adjustment for CASI's installation of less costly circuits. The amount that either party may be entitled to recover is to be determined during the quantum negotiations based on the number and type of circuits and associated wiring that CASI installed and for which it has not been compensated.

ASBCA No. 49772 is remanded to the parties for the negotiation of quantum consistent with this decision and our opinion in ASBCA No. 49071. In the event the parties are unable to reach an agreement, CASI may appeal from a decision of the contracting officer making a unilateral determination of the appropriate adjustment.

DECISION

ASBCA No. 49164 is dismissed as duplicative. The appeal in ASBCA No. 49071 is denied in part and sustained in part. The appeal in ASBCA No. 49772 is denied. The appeals are remanded to the parties for the negotiation of quantum.

Dated: 16 August 2001

MARTIN J. HARTY
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 Nos. 49071, 49164 and 49772, Appeals of Contel Advanced Systems, Inc., rendered in conformance with the Board's Charter.

Dated:

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