

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
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Arnold M. Diamond, Inc. ) ASBCA No. 53724  
 )  
Under Contract No. DACA21-99-C-0058 )

APPEARANCE FOR THE APPELLANT: Mr. Nicholas Ruffus  
Vice President

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.  
Engineer Chief Trial Attorney  
William A. Hough, Esq.  
District Counsel  
Henry R. Richmond, Esq.  
Engineer Trial Attorney  
U.S. Army Engineer District, Savannah

OPINION BY ADMINISTRATIVE JUDGE COLDREN

This appeal was taken from a final decision of the contracting officer denying appellant's claim seeking an equitable adjustment in the amount of \$32,428.29 because the Government required the removal of valve pits which it alleges were not required to be removed under the contract. The Government response is that both the contract specifications and drawings require the demolition of the valve pits.

The appeal was submitted on the written record without a hearing under Rule 11. Only entitlement is at issue.

FINDINGS OF FACT

1. On 30 September 1999, the Government awarded a contract to appellant to demolish an old boiler plant and morgue as well as steam lines running from the old boiler plant on Fort Bragg, North Carolina (R4, tabs 1 and 3 at 00010-2).

2. Section 01005 of the contract specifications provides as follows:

1. Scope of Work: The work consists of furnishing all labor, equipment, transportation, and materials necessary to perform all work in strict accordance with these specifications, schedules, applicable PWBC Drawings, and other contract

documents. The Scope of Work of this contract includes, but is not limited to, the following specific items of work:

## 1.2 Demolition

Demolish the old Boiler Plant (Building 4-3124) and the old Morgue (Building 4-3024). Remove asbestos in existing pits and demolish as shown on Drawings. Debris must be separated before going to landfill, per current landfill requirements.

(R4, tab 6)

3. Sheet 3 (C-1) of the contract drawings indicates in its title block that its scope is “Demolition Plan,” and depicts 17 different demolition tasks which are described in notes with a separate symbol for each task, and the symbols then mark the location of each demolition task. Task 14 was “DEMOLISH ALL STEAM LINES WITHIN THE PHYSICAL PLANT (4-3124) AND FROM THE PLANT TO THE FOLLOWING BUILDINGS: 4-1838, 4-2843, 4-3539, 4-1437, 4-1238 & 4-1137.” None of the tasks listed was the demolition of valve pits and the removal of asbestos nor were there any valve pits depicted on this drawing within or outside buildings 4-3124 and 4-3024. A note at the bottom indicates “WORK THIS DRAWING WITH DRAWINGS C-5 AND C-6.” (R4, tab 9)

4. Sheet 7 (C-5) indicates in its title block that its scope is “STEAM LINE /VALVE PIT DEMOLITION,” and depicts 21 valve pits with 5 marked as having asbestos on pipe insulation along the steam lines which were to be demolished as a part of this contract (R4, tab 5).

5. Paragraph 7 of an affidavit of appellant’s vice president, Nicholas Ruffus, dated 13 March 2003, states that the demolition or removal of the valve pits was not factored into appellant’s bid.

6. During contract performance, appellant’s subcontractor was demolishing and removing the valve pits as directed by Government field representatives while it was removing steam pipes. After 12 valve pits had been removed, appellant directed its subcontractor to stop demolishing and removing the valve pits because it was of the opinion that the removal was not contractually required. (Affidavit of Nicholas Ruffus dated 13 March 2003 (Ruffus) at ¶¶ 5-7)

7. By a letter dated 18 October 2000, appellant wrote the contracting officer protesting the contracting officer’s direction to demolish and remove the valve pits, alleging that their removal was not a contract requirement. The letter pointed out that the valve pits were not designated as removal items on Sheet 3 which we have described in

finding 3 and contended that the specification described in finding 2 must be interpreted as limited to valve pits within the two buildings to be demolished (R4, tab 7).

8. Appellant demolished and removed a total of 21 valve pits. It was not permitted to demolish the valve pits by breaking and collapsing them and using the demolished concrete as fill material but was instead directed to remove and dispose of them (Ruffus at ¶¶ 9, 10).

9. Sheet 4 (C-2) of the contract drawings indicates that the contractor may use beneficial fill in areas that need backfilling (Supp. R4, tab A-1). Appellant states in its affidavit that the demolished concrete valve pits are beneficial fill for use in its backfilling requirements under this contract (Ruffus at ¶ 10). The Government has furnished no evidence as to whether the demolished valve pits are beneficial fill. We find that the demolished valve pits are beneficial fill.

10. By a claim letter dated 9 January 2001, appellant sought an equitable adjustment in the amount of \$32,428.29 for the allegedly extra work of demolishing and removing the valve pits (R4, tab 8).

11. The contracting officer replied in a letter dated 20 March 2001 pointing out that the language of the specifications quoted in finding 2 is not limited as appellant alleges and noting Sheet 7 of the contract drawings similarly indicates that the valve pits are to be demolished and depicts their location (R4, tab 10).

12. A contracting officer's decision dated 6 November 2001 denying appellant's claim was issued (R4, tab 2). Not receiving that decision, appellant requested that the contracting officer issue a final decision on its claim by a letter dated 30 November 2001 (Supp. R4, tab F). On 7 January 2002, the contracting officer re-mailed the final decision to appellant certified mail, return receipt requested (Supp. R4, tab J). It was received by appellant on 23 January 2002 (Supp. R4, tab K). A timely appeal was taken on 12 March 2002.

### DECISION

Appellant contends that the contract does not require the removal of valve pits. However, Paragraph 1.2 of Section 01005 of the contract specifications states “[r]emove asbestos in existing pits and demolish as shown on Drawings” (finding 2). In addition, Sheet 7 of the contract drawings states in its title block “STEAM LINE /VALVE PIT DEMOLITION” and depicts 21 valve pits (finding 4). Thus, the contract clearly requires the demolition of the valve pits and removal of the asbestos.

Appellant argues that the specification requirement for the demolition of the valve pits must be read with the first sentence of Paragraph 1.2 of Section 01005 of the contract

specifications relating to the demolition of Buildings 4-3124 and 4-3024 and limited to valve pits within these buildings. However, no valve pits are depicted there (finding 3). These valve pits appear to be a part of the steam line demolition and are depicted on Sheet 7 which governs the demolition of both the steam lines and valve pits (finding 4).

Appellant further contends that the failure of the Government to include the demolition of the valve pits on Sheet 3 of the contract drawings is another indication that this is not a contract task. However, the specifications clearly requires this work (finding 2). It also instructs contractors to look at the drawings not a single drawing (*id.*). Thus, we do not find this argument persuasive.

We hold that the contract clearly requires the removal of the asbestos and the demolition of the valve pits. We agree with appellant that the Government's refusal to allow appellant to use the demolished pits as beneficial fill was a change to the contract. Thus, appellant is entitled to an equitable adjustment for its increased costs in removing rather than using the demolished valve pits as fill.

The appeal is sustained in part and denied in part.

Dated: 1 July 2003

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JOHN I. COLDREN, III  
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. 53724, Appeal of Arnold M. Diamond, Inc., rendered in conformance with the Board's Charter.

Dated:

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