ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --   )
)
States Roofing Corporation   )   ASBCA No. 54854
)
Under Contract No. N62470-97-C-8319   )

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OPINION BY ADMINISTRATIVE JUDGE PARK-CONROY

        Our initial decision in this appeal, *States Roofing Corporation*, ASBCA
No. 54854, 08-2 BCA ¶ 33,912, was reversed by the Court of Appeals for the Federal
Circuit on the issue of contract interpretation and remanded for a determination of
quantum, our methodology for which the Court affirmed. *States Roofing Corporation v.
Winter*, 587 F.3d 1364 (Fed. Cir. 2009).

FINDINGS OF FACT

        In our initial decision, we found that States Roofing Corporation's (SRC)
interpretation of the contract as permitting the use of waterproofing paint on the roof
parapet walls was reasonable with respect to Roof Cells A and B. The Court of Appeals
found that SRC's interpretation of the contract as permitting waterproofing paint on all
the parapet walls was within the zone of reasonableness and that any ambiguity was
latent, rather than patent. *States Roofing*, 587 F.3d at 1372. The Court concluded that
SRC was entitled to compensation for the additional costs it incurred when it was
required by the government to install DynaClad flashing material instead of using
waterproofing paint. *Id.,* 587 F.3d at 1373.

The Court of Appeals further concluded that our methodology in computing the quantum adjustment for Roof Cells A and B was correct and equitable. *States Roofing*, 587 F.3d at 1373. Our methodology reflected that the estimated reasonable cost of painting the parapet walls, with mark-ups, was $15,178.00 and that the total actual cost of installing the DynaClad, with mark-ups, was $120,295.00. *States Roofing*, 08-2 BCA ¶ 33,912 at 167,809.

Following receipt of the Court's mandate on 28 January 2010, the Recorder advised counsel that the appeal had been restored to the Board's docket and directed counsel to submit a report under Board Rule 32 recommending procedures to be followed so as to comply with the Court's order. Appellant's counsel did so in a report dated 2 March 2010 that was agreed to by counsel for the government.

The Rule 32 report relies upon our quantum findings to compute SRC's recovery for the additional costs incurred for installation of the DynaClad material instead of painting the parapet walls. The report states that SRC is entitled to recover a total of $105,117.00, the difference between the cost of installing DynaClad, $120,295.00, and the estimated cost of painting, $15,178.00. We find the report's statement to be correct. Interest will run on this amount under the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, from 21 April 2003, the date upon which the claim was received by the contracting officer. *States Roofing*, 08-2 BCA ¶ 33,912 at 167,798.

<u>CONCLUSION</u>

In accordance with the decision issued by the Court of Appeals for the Federal Circuit and the Rule 32 report filed by counsel for appellant with the agreement of counsel for the government, we conclude that SRC is entitled to recover a total of $105,117.00, plus CDA interest running from 21 April 2003, until paid.

Dated: 15 March 2010

CAROL N. PARK-CONROY
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)

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I concur   I concur

_____   _____
MARK N. STEMPLER   EUNICE W. THOMAS
Administrative Judge   Administrative Judge
Acting Chairman   Vice Chairman
Armed Services Board   Armed Services Board
of Contract Appeals   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. 54854, Appeal of States
Roofing Corporation, rendered in conformance with the Board's Charter.

        Dated:

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