

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
Computer Sciences Corporation) ASBCA Nos. 56165, 56166
) 56167, 56170
Under Contract No. DAAB07-00-D-E252)

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OPINION BY ADMINISTRATIVE JUDGE PARK-CONROY
ON GOVERNMENT'S MOTION FOR PARTIAL DISMISSAL OF ASBCA
NOS. 56165, 56166, 56167 AND 56170 WITHOUT PREJUDICE
FOR LACK OF JURISDICTION

The Army seeks dismissal of 4 of 15 consolidated appeals without prejudice for lack of jurisdiction for failure to assert a sum certain. The appeals relate to ASBCA No. 56165 (Claim 4), ASBCA No. 56166 (Claim 5), ASBCA No. 56167 (Claim 6), and ASBCA No. 56170 (Claim 9). Appellant Computer Sciences Corporation (CSC) opposes the motion. For the reasons stated below, we deny the motion.

FINDINGS OF FACT FOR PURPOSES OF THE MOTION

Contract No. DAAB07-00-D-E252 was awarded to CSC on 29 December 1999 for the Army's Wholesale Logistics Modernization Program (LMP contract) (R4, tabs 12 to 25).

Pursuant to the contract, Task Order (TO) 0068 was issued with an effective date of 29 December 2004 to compensate CSC for LMP services. As modified, TO 0068 obligated a total of \$47,202,519 to fund CSC's performance from 29 December 2004

through 28 December 2005. (R4, tabs 413, 418, 433, 437, 439, 451, 457, 461, 465, 467, 468, 483, 487, 488)

Pursuant to the contract, TO 0076 was issued with an effective date of 29 December 2005 to compensate CSC for LMP services. As modified, TO 0076 obligated a total of \$126,586,593 to fund CSC's performance from 29 December 2005 through 30 March 2007. (R4, tabs 521, 525, 526, 532, 534, 540, 548, 553, 556, 551, 565, 566, 569, 572, 576, 579, 583, 586, 588, 592, 594, 598, 602, 605, 607, 612, 617, 621, 624, 632, 634, 648) According to the affidavit of the current contracting officer, Mr. Phillip L. Forgione, CSC submitted lump-sum invoices (DD Forms 250) for fixed-price services under TO 0068 and for both fixed-price and cost reimbursement services under TO 0076 (gov't mot., Forgione aff. ¶¶ 8-11 and exs. 1-3).

On 17 January 2006, CSC submitted 12 Requests for Equitable Adjustment (REAs) under the LMP contract (R4, tab 520). Of relevance here are REAs 4, 5, 6, and 9.

REA 4, "Cost of Legacy Sustainment Beyond Original Deployment Three Date," sought \$58,880,000. The REA explained that this amount had been calculated by applying CSC's historic average "burn rate" for legacy sustainment [REDACTED] through November 2006, the anticipated additional 32 months of sustainment, plus a 15% fee. (R4, tab 520 at 11484-86)

REA 5 sought "Extended Government Facilities Costs" in the amount of \$6,151,488. The REA explained that this amount had been calculated by applying CSC's forward pricing rate of [REDACTED] for 175 Government employees working full-time through November 2006, the anticipated additional 32 months for which such facilities could be provided, plus a 15% fee. (R4, tab 520 at 11486-87)

REA 6, "Single Stock Fund Milestone 3 Sustainment," sought \$25,877,503. The REA explained that this amount was the same as that CSC had proposed on 10 June 2004 for Single Stock Fund Milestone 3 (SSF MS3) sustainment services. (R4, tab 520 at 11487-89) The 10 June 2004 proposal broke down CSC's proposed costs by year. For Government Fiscal Year (GFY) 2005, the proposed cost was \$3,169,387; for GFY 2006, the proposed cost was \$3,102,029; for GFY 2007, the proposed cost was \$3,011,406. (R4, tab 373 at 9765-66)

REA 9, "Additional Infrastructure Support," sought \$72,395,904, including a 15% fee. The REA explained that this amount was based upon the costs of two data centers and related equipment purchases through CSC's fiscal year ending March 2004. (R4, tab 520 at 11491-92)

On 18 April 2006, Ms. Patricia Caltabilota, who was then the contracting officer, advised CSC that the Defense Contract Audit Agency (DCAA) had initiated an audit related to the 12 REAs, pursuant to which CSC provided DCAA with additional information (app. opp'n, decl. of Lisa A. Lax ¶ 7, citing R4, tab 595).

On 28 April 2006, CSC submitted two additional REAs, one of which was REA 13, "Continuation and Expansion of CSC's Extra-Contractual Efforts Pursuant to Government Direction," seeking net costs of \$78,919,019 for the period 2 April 2005 through 28 December 2005, consisting of continuation costs for REAs 4, 5, 6, 9 and 10 and extra-contractual work for REA 3. The amount sought in REA 13 reflected a credit of \$42,400,000 for payments already received from the Government, but did not allocate the payments among the REAs identified. (R4, tab 559 at 11799, 11806, 11822-26)

On 14 July 2006, CSC certified all 14 of its REAs as claims under the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613 (R4, tab 597). The amounts requested for REAs/Claims 4, 5, 6, and 9 did not change; the amount requested for REA/Claim 13 increased to \$84,547,518, apparently due to increases associated with REAs 3 and 10 (*id.* at 12127).

On 14 June 2007, Mr. Forgione denied Claim 6 for lack of support for the costs claimed and denied the remaining 13 claims for lack of entitlement (R4, tab 647). This timely appeal followed. As is relevant here, individual ASBCA docket numbers were assigned to CSC's claims as follows: ASBCA No. 56165 (REA/Claim 4); ASBCA No. 56166 (REA/Claim 5); ASBCA No. 56167 (REA/Claim 6); ASBCA No. 56170 (REA/Claim 9); and ASBCA No. 56174 (REA/Claim 13).

In his affidavit, Mr. Forgione avers that he is "unable to calculate the portion of the \$42,400,000 [credit given in Claim 13] that is attributable to each of Claims 4, 5, 6, and 9, and therefore cannot subtract the amounts paid from the amounts claimed in those Claims to calculate the 'sum certain' CSC was actually claiming" (Forgione aff. ¶ 14).

CSC acknowledges there is "temporal overlap" of Claims 4, 5, and 6 with the period covered by Claim 13, from 2 April 2005 through 28 December 2005, approximately nine months. It also acknowledges that Claims 4, 5, and 6 overlap with the period covered by TO 0076, from 29 December 2005 through November 2006, approximately 10 months. (App. opp'n at 10) CSC sees no overlap between Claim 9 and Claim 13 because Claim 9 sought recovery of infrastructure costs only through March 2004 (app. proposed findings of fact 35-37).

DISCUSSION

The Army asserts that we lack jurisdiction over Claims 4, 5, 6, and 9 because CSC failed to satisfy the requirement that CDA claims seek a “sum certain.” It asserts that the amounts sought include costs already paid by the Army that were billed in a lump sum fashion under TOs 0068 and 0076 and that Claims 4, 5, and 6 overlap with Claim 13. According to the Army, the contracting officer cannot sort out how to allocate the \$42,400,000 payment credit CSC applied in Claim 13 among the various claims to determine the “sum certain” claimed.

CSC responds that Claims 4, 5, 6, and 9 each specified a specific monetary amount, thus meeting the jurisdictional requirement for a sum certain and that neither overlap nor reduction for partial payments invalidates the sums certain claimed. CSC further responds that even if it had not stated specific monetary amounts, the information provided to the contracting officer allowed for a final award that could be readily quantified and reasonably determined.

As a prerequisite to our jurisdiction over contractor appeals, the CDA requires that a valid written claim be submitted to the contracting officer for decision and certified if the amount sought exceeds \$100,000. 41 U.S.C. § 605(a), (c). *Paragon Energy Corp. v. United States*, 645 F.2d 966, 967 (Ct. Cl. 1981). FAR 33.201 further specifies that the amount of a claim seeking the payment of money be stated in a “sum certain.” *Essex Electro Engineers, Inc. v. United States*, 960 F.2d 1576, 1581-82 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 953 (1992). The purpose of these requirements is to give 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).

We are to undertake a common sense analysis in evaluating the CDA claim factors. *See Transamerica Insurance Corp. v. United States*, 973 F.2d 1572, 1579 (Fed. Cir. 1992). Here, REAs 4, 5, 6, and 9 were converted into CDA claims and submitted to the contracting officer on 14 July 2006. Each claim sought a specific dollar amount. Claim 4 sought \$58,880,000; Claim 5 sought \$6,151,488; Claim 6 sought \$25,877,503; and Claim 9 sought \$72,395,904. Thus, each of the claims on its face demands a sum certain as required for our jurisdiction. *See H.L. Smith, Inc. v. Dalton*, 49 F.3d 1563, 1565 (Fed. Cir. 1995) (detailed breakout of costs claimed not needed to provide adequate notice so long as written demand includes a sum certain).

Contrary to the Army’s contentions, neither the \$42,400,000 credit given in Claim 13 nor the overlap of Claims 4, 5, and 6 with Claim 13 deprives us of jurisdiction. The jurisdictional validity of a claim is determined at the time of submission to the contracting officer and the accuracy of the sum certain amount claimed goes to the merits of the claim, not to its validity as a claim. *See Harbert Int’l, Inc.*, ASBCA No. 44873, 97-1

BCA ¶ 28,719 at 143,357, *recon. denied*, 97-2 BCA ¶ 29,235 at 145,432 (overstated claim amount that failed to credit the government for partial payments did not affect Board jurisdiction). *See also Eaton Contract Services, Inc.*, ASBCA Nos. 54054, 54055, 03-2 BCA ¶ 32,273 at 159,664. Thus, any reduction in the sum certain amounts sought in Claims 4, 5, 6, and 9 due to the credit provided in Claim 13 does not render the claims invalid for jurisdictional purposes. *See Todd Pacific Shipyards Corp.*, ASBCA No. 55126, 06-2 BCA ¶ 33,421 at 165,687; *Eaton*, 03-2 BCA ¶ 32,273 at 159,664. *See also MDP*, ASBCA No. 52769 *et al.*, 01-1 BCA ¶ 31,359 at 154,883 (question as to how claim amount was calculated because of an anomaly between the claim and underlying invoice not jurisdictionally fatal where sum certain was stated).

With respect to the overlap, we consider our decision in *Landmark Construction Corp.*, ASBCA No. 53139, 01-1 BCA ¶ 31,372 to be instructive and apply the same common sense analysis here. In *Landmark*, the contractor submitted a certified REA based upon a differing site condition, followed by a “comprehensive” certified REA that included a new asbestos claim and requested a contracting officer’s final decision. The contractor then amended its first REA and requested a contracting officer’s final decision. It also amended its “comprehensive” claim and requested a final decision. Neither of the amended submissions included the asbestos claim. Contracting officer decisions were issued denying both amended submissions and timely appeals filed at the Board. The contractor then took an appeal from a deemed denial of the “comprehensive” claim that had included the asbestos claim and the government moved to dismiss the appeal for lack of jurisdiction. We found that the complaints in all three appeals contained allegations and monetary claims that substantially overlapped, “creat[ing] a confusing landscape.” *Id.* at 154,908. Despite the substantial overlap in allegations and monetary claims, we concluded that appellant had satisfied the CDA jurisdictional requirements and denied the motion to dismiss. As in the *Landmark* case, the fact that the overlap here of Claims 4, 5, and 6 with Claim 13 may create a “confusing landscape” does not deprive us of jurisdiction inasmuch as the other prerequisites have been met.

We consider the Army’s assertion that the contracting officer cannot sort out how to allocate the \$42,400,000 among the various claims to be a matter relating to proof of quantum, not one relating to our jurisdiction over the claim in the first instance. In this regard, the authority relied upon by the Army for the proposition that the amounts requested are not “reasonably determinable” is inapposite because each of the four claims at issue here clearly seeks a sum certain (gov’t mot. at 19-24). A similar jurisdictional contention was raised in *Lockheed Martin Aircraft Center*, ASBCA No. 55164, 07-1 BCA ¶ 33,472. There, as here, the contractor’s claim sought a specific dollar amount, but the government argued that the claim did not state a sum certain because the contracting officer could not compute the sum certain due from the claim documents. Among the reasons asserted for the inability to compute the sum certain was that the claim did not show how costs were to be allocated either among the line items or over the option years.

We denied the government's motion to dismiss, finding that the appellant had submitted a claim in a sum certain and that we had jurisdiction to entertain it. *Id.* at 165,933.

The Army's various other arguments regarding CSC's alleged failure to provide an accurate accounting of the reductions applicable to Claims 4, 5, 6, and 9 subsequent to the submission of the claims to the contracting officer are not relevant to our jurisdictional inquiry. *See Harbert*, 97-1 BCA ¶ 28,719 at 143,357 and 97-2 BCA ¶ 29,235 at 145,432.

CONCLUSION

The Army's motion to dismiss Claims 4, 5, 6, and 9, ASBCA Nos. 56165, 56166, 56167 and 56170, for lack of jurisdiction is denied.

Dated: 21 September 2010

/s/ Carol N. Park-Conroy

CAROL N. PARK-CONROY

Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

/s/ Mark N. Stempler

MARK N. STEMLER

Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

/s/ Eunice W. Thomas

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. 56165, 56166, 56167 and 56170, Appeals of Computer Sciences Corporation, rendered in conformance with the Board's Charter.

Dated:

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