

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
Astro Systems, Inc. ) ASBCA Nos. 60769, 60781  
Under Contract Nos. W56PFY-14-A-0042 )  
W56PFY-16-P-0049 )

APPEARANCE FOR THE APPELLANT: Mr. Ralph L. Miller  
President

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.  
Army Chief Trial Attorney  
MAJ Deirdre K. Baker, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE MCILMAIL

Appellant seeks profit related to the repair of damage to vehicles that appellant leased to the government. We consolidated the appeals. The appeals are governed by the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109.<sup>1</sup>

FINDINGS OF FACT

*ASBCA No. 60769*

On 25 November 2015, the government awarded to appellant, Astro Systems, Inc. (Astro), Delivery Order 0011 under Contract No. W56PFY-14-A-0042, for the lease and maintenance of five vehicles for use in N'Djamena, Chad (ASBCA No. 60769 R4, tab 1 at 1, 3, tab 5 at 13-36). Astro subsequently, on 10 August 2016, submitted a claim to the contracting officer on 20 June 2016 requesting \$1,164 for damage to two of the vehicles (\$779 in direct costs, \$233 in overhead, and \$152 in profit) while in the government's possession (R4, tab 6). According to the claim, the repairs to the vehicles consisted of body metal work, repainting, and repairs to items such as bumpers and tires (*id.*).

On 3 August 2016, the contracting officer issued a final decision awarding \$778.11 (R4, tab 9 at 4, 5). On 18 August 2016, the contracting officer issued a

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<sup>1</sup> Astro elected to have the appeals processed pursuant to Board Rule 12.2; consequently, this decision shall have no value as precedent and in absence of fraud, shall be final and conclusive and may not be appealed or set aside. Board Rule 12.2(d).

unilateral modification increasing the total cost of the contract by \$778.11 “[f]or repair [sic] the contractor’s vehicle due to the incurred cost for damages caused by government personnel” (R4, tab 8). Astro timely filed its appeal from the decision on 30 August 2016, seeking \$385 in overhead and profit (R4, tab 9 at 6). We docketed the appeal as ASBCA No. 60769. In its initial brief before the Board, appellant states that its request consists of \$233 in overhead and \$152 in profit (app. br. at 7). On 22 November 2016, the government paid Astro \$233 in overhead (app. reply at 2; *see* gov’t br. at 3 n.2, at 4 ¶ 8; supp. R4, tab 10).

*ASBCA No. 60781*

On 18 February 2016, the government awarded to Astro Contract No. W56PFY-16-P-0049-P00003 for the lease and maintenance of vehicles for use in Faya, Chad (ASBCA No. 60781 R4, tab 1 at 1, 3). Astro subsequently, on 10 August 2016, submitted a claim to the contracting officer requesting \$1,723 for damage to one of the vehicles (\$1,152 in direct costs, \$346 in overhead, and \$225 in profit) while in the government’s possession (R4, tab 8 at 10). According to the claim, the repairs to the vehicle consisted of repairs to tires, an injector pump, and a fuel pump (*id.*).

On 16 August 2016, the contracting officer issued a final decision awarding \$1,495.87 in direct costs and overhead, but denied the request for profit (R4, tab 8 at 2-3). Astro timely filed its appeal from the decision on 7 September 2016, seeking \$225 in profit (R4, tab 10 at 6, 8). We docketed the appeal as ASBCA No. 60781.

## DECISION

As Astro acknowledges (app. reply at 2), now that the government has paid Astro the requested overhead for the N’Djamena repairs, the only issue before us is whether Astro is entitled to \$377 in profit on the N’Djamena and Faya repairs. Astro fails to demonstrate that its contracts require the government to pay Astro profit on such repairs. Astro points out that profit motivates a contractor to perform a contract (app. br. at 2), and we do not disagree.<sup>2</sup> However, here, the contracts were for the lease and maintenance of vehicles, not their repair. Indeed, Astro does not contend that any of the repairs consists of the vehicle “maintenance” that the contract requires it to provide. Astro contends in its reply that “after the government personnel damaged the vehicles and the appellant presented a claim for the repairs, the government unilaterally modified the contract to create another scope,” that is “the scope of repairing the vehicles” (app. reply at 2-3). We disagree. Astro cites no record material in support of that contention, and the only unilateral modification we find in the record of these appeals is the 18 August 2016 modification to Contract

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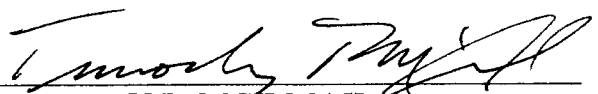
<sup>2</sup> In support of its point, Astro cites Federal Acquisition Regulation 15.404-4(a)(3), but does not demonstrate that the regulation is a part of its contracts.

No. W56PFY-14-A-0042 increasing the total cost of the contract by \$778.11 “[f]or repair [sic] the contractor’s vehicle due to the incurred cost for damages caused by government personnel” (ASBCA No. 60769 R4, tab 8). Nevertheless, that modification did not increase the scope of the contract to *require* the repair of any vehicles, it merely increased the total cost of the contract to pay the incurred costs of vehicle repair that the contracting officer had awarded.

Astro cites *New York Shipbuilding Co.*, ASBCA No. 16164, 76-2 BCA ¶ 11,979, for the statement that “[w]ithout the payment of a profit which is fair under the circumstances, the Government would be getting something for nothing and the contractor would not truly be made whole.” *Id.* at 57,427. However, there the Board was addressing contract changes that “[took] place and were performed.” *Id.* Astro does not point to any changes to its contracts; indeed, there is no indication that the contracts or the government required Astro to repair the damaged vehicles. Presumably, had Astro decided not to repair the damaged vehicles, and provided other suitable vehicles for the government’s use, Astro would have satisfied its obligations under the contracts, and the government could not have insisted upon the vehicles’ repair. Under the circumstances of these appeals, if the government paid Astro profit (that is, more than the cost of repairing the vehicles, including overhead) it would be getting nothing in return, resulting in a windfall to Astro.

The appeals are denied.

Dated: 20 December 2016

  
TIMOTHY P. MCILMAIL  
Administrative Judge  
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. 60769, 60781, Appeals of Astro Systems, Inc., rendered in conformance with the Board's Charter.

Dated:

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JEFFREY D. GARDIN  
Recorder, Armed Services  
Board of Contract Appeals