



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED IN PART FOR LACK OF JURISDICTION: April 26, 2007

CBCA 91

ALL STAR METALS, LLC.,

Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

William M. Dozier of Vandeventer Black LLP, Norfolk, VA, counsel for Appellant.

Eric Colin Crane, Office of the Chief Counsel, Maritime Administration, Department of Transportation, Washington, DC, counsel for Respondent.

Before Board Judges Stern, Fennessy, and Somers.

FENNESSY, Board Judge.

This appeal arises from contract no. DTMA1P04057 between the Maritime Administration, Department of Transportation (MARAD), and All Star Metals, LLC (All Star) for towing, dismantling, and remediating the materials and components of the vessel PROTECTOR. We have before us respondent's motion to partially dismiss Claim I of the complaint and to dismiss Claim III in its entirety for lack of jurisdiction based upon appellant's failure to submit a claim to the contracting officer for a decision. Appellant opposes the motion as to Claim I but does not object to the dismissal without prejudice of Claim III. For the reasons set forth below, we grant the motion in part.

Background

On September 10, 2004, MARAD awarded the contract to All Star. The period of performance was 110 days beginning on September 13, 2004, and ending on January 1, 2005. At some time, undeterminable from the record before us, the completion date was extended by agreement to January 20, 2005.

By an e-mail message dated January 25, 2005, to the contracting officer's technical representative, All Star requested an extension of the completion date, claiming 172 days of excusable delay attributable to a variety of causes. On September 7, 2005, All Star notified MARAD that it had stopped work because All Star had found a radioactive device in a radio room. MARAD made arrangements for removal of the item and ordered All Star to cordon off the affected area and otherwise to resume the work. By letter dated September 15, 2005, All Star requested an extension of the performance period until October 15, 2005. The contract was not completed until November 29, 2005. All Star did not submit any monetary claims to the contracting officer.

On June 7, 2006, MARAD's contracting officer rendered a decision granting All Star a three-day extension of the performance period to January 23, 2005, as a result of the September 2005 discovery of the radioactive material. Otherwise, the contracting officer found that there was no excusable delay. Additionally, the contracting officer asserted a claim by MARAD against All Star for \$52,379 for costs incurred by MARAD for environmental monitoring of the PROTECTOR and for administering the contract during the period of unexcused delay.

Appellant commenced a timely appeal of that decision. In its complaint, All Star asserted three claims: one for an extension of the performance period to November 29, 2005, plus compensation for all government-caused delays (Claim I); another for rescission of the \$52,379 in damages assessed by the contracting officer and release of \$36,887.86 of contract funds retained by MARAD (Claim II); and a third for an equitable adjustment of \$256,319.84 for costs incurred by All Star for a stop work period due to discovery of radioactive material on the vessel and the discovery, after contract completion, of a radioactive substance in a rail car filled with scrap from the vessel (Claim III).

Respondent moves to dismiss without prejudice a portion of Claim I and all of Claim III for lack of subject matter jurisdiction because All Star did not submit a monetary claim

to the contracting officer.¹ All Star does not oppose dismissal of Claim III without prejudice because All Star has not submitted to the contracting officer a claim for the costs involved in that claim. However, it opposes the motion as to Claim I because it says that Claim I does not assert a monetary claim.

Discussion

Pursuant to the Contract Disputes Act (CDA), the Board possesses jurisdiction to entertain claims involving any express or implied contract for the procurement of property or services. 41 U.S.C.A. §§ 601-613 (2006). For jurisdiction to vest in the Board there must be both a valid claim and a contracting officer's decision on that claim (or a deemed denial of the claim). *Id.* §§ 605(a), 606; *James M. Ellett Construction Co. v. United States*, 93 F.3d 1537, 1541-42 (Fed. Cir. 1996); *Paragon Energy Corp. v. United States*, 645 F.2d 966 (Ct. Cl. 1981). The question of this Board's jurisdiction, therefore, first turns on whether a contracting officer has rendered a decision denying a valid contractor claim (or is deemed to have rendered such a decision) or asserting a Government claim.

All Star states that respondent misunderstands Claim I, arguing that All Star did not assert a monetary claim in Claim I. Rather, All Star states that Claim I merely contests the contracting officer's decision that there was no excusable delay other than the three days granted in the final decision and seeks an extension of the contract period. While that may have been All Star's intent, the contractor's request for "compensation for all delays" indicates that it seeks monetary relief and not just an extension of the performance period.

All Star has not submitted a monetary claim to the contracting officer for compensable delay. Accordingly, only All Star's appeal of the contracting officer's decision that there were only three days of excusable delays is within the Board's jurisdiction. To the extent that Claim I seeks monetary compensation for delay it is **DISMISSED FOR LACK OF JURISDICTION**.

All Star has not opposed the motion as to Claim III, having acknowledged that its failure to submit a claim for the costs it seeks to recover renders it outside the Board's jurisdiction. It too is **DISMISSED FOR LACK OF JURISDICTION**.

¹ Respondent also requested partial dismissal of Claim II but has withdrawn that portion of its motion because MARAD's retention of contract funds was to offset MARAD's \$52,379 damages claim. As such, appellant's request for the release of the retainage is within the scope of the contracting officer's decision and is properly before the Board. *See Placeway Construction Corp. v. United States*, 920 F.2d 903, 906 (Fed. Cir. 1990).

Decision

The motion is **GRANTED** in part

EILEEN P. FENNESSY
Board Judge

We Concur:

JAMES L. STERN
Board Judge

JERI K. SOMERS
Board Judge