



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: August 17, 2009

CBCA 920

PM SERVICES COMPANY,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Kevin M. Kraham and Jeffrey J. Sun of Littler Mendelson, P.C., Washington, DC, counsel for Appellant.

Helen Henningsen, Office of Regional Counsel, Department of Veterans Affairs, Milwaukee, WI; and Philip Kauffman and Phillipa L. Anderson, Office of General Counsel, Department of Veterans Affairs, Washington, DC, counsel for Respondent.

GOODMAN, Board Judge.

Appellant, PM Services Company, has appealed a contracting officer's final decision denying a claim in the amount of \$42,891.76 for work appellant alleges was outside the scope of its contract with respondent. Appellant elected to proceed pursuant to Board Rule 52, Small Claims Procedure (48 CFR 6101.52 (2008)). This decision is rendered pursuant to that rule by the presiding judge in summary fashion, is final and conclusive, and has no value as precedent. The parties elected to have the appeal decided on the written record. The parties each submitted two record submissions and responded to one Board inquiry. The presiding judge has considered the record in this appeal and denies the appeal.

Factual Summary

On October 1, 2001, appellant was issued task order 797-R2-0005 (the task order) under its existing contract no. V797P00-FDF1-0018. The task order required appellant to perform operations, maintenance, and incidental repairs for the Medical Treatment Facility (MTF) on the Minot Air Force Base (MAFB) in North Dakota. The initial performance period of the task order was October 1, 2001, through September 30, 2002, and established a firm-fixed price for the services required based upon the square footage of the MTF MAFB. Respondent had the option to extend the task order for four additional option periods. The task order read in relevant part:

PERFORMANCE REQUIREMENTS. The Contractor shall provide all personnel, equipment, tools, vehicles, materials, supervision, transportation and services necessary to effectively, economically, and satisfactorily perform all operations, maintenance, and incidental repairs of Government Medical Treatment Facilities (MTF), to include both the Patient Care Areas and Non Patient Care Areas located at Minot MTF ND. Maintenance services shall include all corrective, preventive maintenance, and emergency maintenance with a total cost of \$2,500 (Parts Only) or less per occurrence. Incidental repairs are repairs of systems or components not exceeding \$2,000. This contract is designed for the maintenance, scheduled and unscheduled, incidental repair, and operations activities necessary to keep medical facilities in good working order. Maintenance includes regularly scheduled adjustments and inspections, preventive maintenance tasks, and emergency response and service calls for incidental repairs. All tasks shall be executed in a consistent manner by individuals who are qualified, careful and efficient in trade and in strict accordance with prevailing industry standards.

Respondent's Appeal File, Exhibit 1.

The following paragraph of the "Performance Requirements" is pertinent to this appeal:

n. Heating, Ventilating and Air Conditioning: Services are required for the operations, maintenance, and incidental repairs of HVAC components and coordination of repairs of moving components by the HVAC Contractor. Work includes incidental repair and maintenance of dampers, ducts and hinges, diffusers, insulation, drain pans, piping, seals, weather stripping, electrical wiring to motor control centers and disconnects, air conditioning unit enclosures (including access panels), chillers, air-handlers, boilers, HVAC

water treatment systems, and all other components of the heating, ventilation and air conditioning systems. Includes maintaining required humidity levels and required Air Balances in critical patient care areas. The contractor is required to inspect and service in accordance with the manufacturer's recommendations, prevailing industry standards and local, state, national, and international (where applicable) codes.

Respondent's Appeal File, Exhibit 1.

At issue here is work performed by appellant on variable air volume (VAV) boxes. As described by respondent's chief of engineering for its Health Facilities Division, Air Force Medical Support Agency, a VAV box is included within the air distribution system of the HVAC system. The purpose of the VAV box is to pull conditioned air from the ducts and redirect the air at a prescribed volume into a space or room to maintain a specific temperature within that space or room. VAV boxes at the MTF MAFB are pneumatically controlled by thermostats. They are an integral part of the HVAC system. Affidavit of David Christiansen (March 20, 2009) ¶ 9.

Respondent exercised the task order option periods through 2006. From the commencement of the task order in October 2001 until June 2006, appellant performed work required on the HVAC system to correct temperature and ventilation problems. Under these work orders, appellant performed work on the VAV boxes, thermostats, and other parts of the HVAC system. Of these work orders, sixty-six specifically note that appellant performed maintenance on VAV boxes prior to June of 2006. Affidavit of Marc Cypert (March 31, 2009); Respondent's Appeal File, Exhibit 29.

Prior to June 2006, the engineering staff at MTF MAFB became aware as the result of an upgrade in the HVAC system (not performed by appellant) that VAV boxes were not functioning properly. On June 30, 2006, the contracting officer directed appellant to repair the VAV boxes to restore the system to its proper functioning.

Appellant performed the work as directed by the contracting officer. On February 8, 2007, appellant submitted a claim requesting \$42,891.76, alleging that the work was outside the scope of the task order. The contracting officer denied the claim and appellant appealed the contracting officer's final decision to this Board.

Discussion

The task order required appellant to operate, service, and maintain the HVAC and all of its components at a fixed price. The task order contained a non-inclusive list of the

components of the HVAC system, concluding with the statement “and all other components of the heating, ventilation and air conditioning systems.” While the list did not specifically include “VAV boxes,” there is no question that the VAV box is a component of the HVAC system.

Appellant asserts that according to the manufacturer’s literature the VAV box does not require maintenance and therefore any problems arising could not have been the result of lack of maintenance of the VAV boxes. Appellant also maintains that the VAV boxes are not listed as an “inventory item” by the Defense Medical Logistics Standard Support (DMLSS), the automated maintenance support system used by the Government. These assertions ignore appellant’s obligations to repair any component of the HVAC system, of which the VAV boxes were a part. If the problems were corrected by repair to the VAV boxes, then such repairs were within the scope of the task order.

During the term of the task order, until June 2006, appellant performed at least sixty-six work orders for repairs of VAV boxes. Appellant distinguishes the work which it was ordered to perform after June 2006 as outside the scope of the contract for several reasons. Appellant asserts that the work performed after June 2006 was considerably more than the work performed in the sixty-six prior task orders. However, this work on the VAV boxes was required as a component of the HVAC system, and there was no quantitative limit specified in the task order. Appellant states that respondent paid separately for repairs to VAV boxes in 2000. However, the work in 2000 was performed before the fixed price task order was issued in 2001. As such, evidence of payment procedures for similar work prior to the task order is not relevant to the instant appeal.

Accordingly, the work at issue in this appeal was within the scope of the task order requirement to maintain and repair all components of the HVAC system and was not extra work as alleged by appellant.

Decision

The appeal is **DENIED**.

ALLAN H. GOODMAN
Board Judge