



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: January 24, 2014

CBCA 3443

GOTTFRIED CONTRACTING, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Gregg E. Hutt of Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullins, P.A., Tampa, FL, counsel for Appellant.

Duane C. Pitt, Office of Regional Counsel, General Services Administration, Atlanta, GA, counsel for Respondent.

McCANN, Board Judge.

Appellant Gottfried Contracting, LLC (Gottfried), appeals the decision of a contracting officer of respondent, General Services Administration (GSA), denying a claim for increased costs resulting from GSA's direction that all cabling performed on the contract at issue originate in one specific room. A hearing on the merits was held on November 20, 2013. Appellant has elected the small claims procedure. Rule 52 (48 CFR 6101.52 (2012)); 41 U.S.C. § 7106 (b) (Supp IV 2011). Consequently, this decision is being issued by a single judge; the decision is final and conclusive and may not be set aside except due to fraud, and it has no precedential value.

Facts

On September 20, 2011, Gottfried and GSA entered into contract GS-04P-08-EX-D-0024/GS-P-04-11-EX-5072 (the contract). The contract was for the interior build-out and eleventh-floor renovation at the Timberlake Federal Annex in Tampa, Florida. Part of the build-out pertained to the installation of data, voice, and radio cabling.

Drawing ET101, entitled “New 11th Floor Plan - Telecommunications,” shows a layout of the rooms on the eleventh floor. The drawing shows the phase one and phase two plan for construction. The phase one work covers the western half of the eleventh floor and the phase two work covers the eastern half of the floor. The drawing shows no wiring or cabling, but it does show the cable tray where wiring and cabling is to be housed. The main part of the cable tray runs almost the entire length of the eleventh floor, parallel to the north and south walls, and is located about one-third of the way from the north wall to the south wall. Sections of cable tray running north-south connect to the main tray. There is a break in the middle of the main tray, near where the phase one work ends and the phase two work begins. The main tray in phase one terminates about a foot or two from the main tray in phase two. The cable tray in phase two does not terminate like the cable tray in phase one, but curves away from the phase one tray and runs south.

Drawing ET101 shows that room 1101 has extensive ladder cable runway.¹ Room 1133 also has ladder cable runway, but to a lesser extent (about fifteen to twenty per cent of the amount shown in 1101). Room 1133 has a small space or box labeled “ITR” in it. Room 1101 has no such space or box with such a designation. The specifications do not define what ITR stands for. Appellant contends it means “Interim Telecommunications Room.”

The technical specifications for the cabling are located on drawings TR017 and TR018,² and are entitled “**Scope of Work, Voice / Data / Radio Cable Installation.**” The relevant technical specifications appearing on Drawing TR017 state (with underlining added throughout):

8. Radio wires will be terminated on a separated patch panel in each Communications Equipment Room

¹ Ladder cable runway is used to run cable down the wall to equipment.

² Drawing TR017 is located in the Appeal File at Exhibit 2, page 52 of 53. Drawing TR018 is page 53 of 53. ET101 is page 29 of 53. Exhibit 2 of the Appeal File is not numbered consecutively throughout. The Contract Drawings are found in the final 53 pages of Exhibit 2.

....

11. Voice data1/Data 2 and radio wires shall be separated on different patch panels in separate racks as applicable, in the Communications Equipment Room.

....

13. The contractor shall install . . . in the office space Communications Equipment Room

14. The contractor shall provide . . . between Communications Equipment Rooms

....

Patch Cables - All patch cables will be fitted

....

Communications Closet (CER) The patch cables used in the CER shall be labeled with

....

Patch Cables - The contractor shall be responsible for the installation, labeling, and testing of all data patch cables associated with this installation. Patch cables shall be installed at the client end and in the appropriate communications closets

Special Note: The contractor shall provide patch cables for the rack Connections in the CER

....

Communications Closet (CER) - The contractor shall install, test and label patch cables in the CER for every cable installed under the contract.

On drawing TR018 there is a table that specifies the rooms in which the cabling is to terminate. This table, however, does not specify where the cabling is to originate. The table

shows that room 1101 has no cable terminating in it other than one phone cable. It is the only room on the eleventh floor that has no data or radio cabling terminating in it.

The other relevant portions of the technical specifications on drawing TR018 are:

Additional Requirements

....

A cable tray system will be utilized throughout the office for the Security System Wiring and the Data/Comm Wiring. The Cable Tray shall extend into **Room 1101.**"

A 4" CONDUIT shall be installed to run from the building Telco riser to GSA Room 1101

Appropriate colored Patch Cables will be provided for each connection at the workstation and in Room 1101 to include Fiber Patch Cables

....

Install the following:

- 1 - 25 Pair Cable from Room 1101 to Roof (Machine Room/TBD
- 1 - 200 pair Cable from Room 1101 to the Building DEMARC
- 1 - 4 Pair Fiber Cable from Room 1101 to the Building DEMARC
- 2 - RED CAT6 Cables from Room 1101 to

Discussion

Appellant contends that the contract required the cabling to originate in room 1101 (in phase 1) and room 1133 (in phase 2) and to terminate in other rooms. Appellant therefore avers that GSA's direction to originate all cabling in room 1101 was a change to the contract entitling it to an equitable adjustment. Respondent, on the other hand, contends that the contract requires that all cabling originate in room 1101.

We must first decide whether the contract was ambiguous. "To show an ambiguity it is not enough that the parties differ in their respective interpretations of a contract term. Rather, both interpretations must fall within a 'zone of reasonableness.'" *Metric Constructors, Inc. v. NASA*, 169 F.3d 747, 751 (Fed. Cir. 1999) (citations omitted). Each party here argues

that there is no ambiguity because its interpretation is reasonable and the other party's interpretation is unreasonable.

If the determination is made that the contract is ambiguous, we must then decide whether that ambiguity is latent or patent.

Because we hold that the solicitation was ambiguous, we turn now to the question of whether the ambiguity was patent. An ambiguity will only be construed against the government if it was not obvious on the face of the solicitation and reliance is shown. *See, e.g., Edward R. Marden Corp. v. United States*, 803 F.2d 701, 705 (Fed. Cir. 1986). If the ambiguity is patent, it triggers a duty to inquire. A patent ambiguity is one that is "obvious, gross, [or] glaring, so that plaintiff contractor had a duty to inquire about it at the start." *H&M Moving, Inc. v. United States*, 204 Ct. Cl. 696, 499 F.2d 660, 671 (Ct. Cl. 1974). If an ambiguity is obvious and a bidder fails to inquire with regard to the provision, his interpretation will fail. *Triax Pac., Inc. v. West*, 130 F.3d 1469, 1475 (Fed. Cir. 1997).

NVT Technologies, Inc. v. United States, 370 F.3d 1153, 1162 (Fed. Cir. 2004).

The specifications and drawings do not indicate in which room or rooms the cabling is to originate, yet they do indicate where all cabling is to terminate. The specifications could reasonably be interpreted as requiring the cabling to originate in one room, or more than one room. Accordingly, the specifications and drawings are ambiguous. For the following reasons, we find that the ambiguity was glaring and obvious prior to bid, and therefore the contract was patently ambiguous.

Room 1101 has extensive ladder cable runway that is used to run cabling entering a room from the cable trays to the equipment. There is also ladder cable runway in room 1133, but to a lesser extent. This seems to indicate that both rooms could accommodate cable origination. However, room 1133 is substantially smaller than room 1101 and has much less ladder cable runway. Thus, it does not appear that the drafters intended it to serve a function equal to that of room 1101, as appellant contends. Furthermore, there could well be other uses for the ladder cable in room 1133 to accommodate other cable now or in the future.

The specifications state that there would be one communications equipment room (most likely, the room where the cabling was to originate), but then state that there would be multiple communication equipment rooms. It is obvious that the number of communication equipment rooms cannot be determined from the specifications.

The specifications are further ambiguous with regard to whether a communications closet is the same as a communications equipment room. The specifications refer to multiple “communications closets” and a singular “CER.” The specifications use the abbreviation “CER” for communications closet, but there is no abbreviation provided for a “communications equipment room.” This is confusing, as the abbreviation “CER” would more appropriately apply to a communication equipment room than to a “communication closet.” The contractor should have inquired about this prior to bid.

The cable tray shown on the drawing is not connected at its mid-point. There is a break between the phase one work and the phase two work. This seems to support the position that the designers intended there to be a separate cable system for each phase of the work. However, all of the connectivity to the outside world is through room 1101. The specifications reference multiple cables running from room 1101 to the roof and to building DEMARC. This is a clear indication to connectivity to the outside world. Nothing similar applies to room 1133. Connectivity to the outside world from room 1133 would have to be accomplished in some other way.

Appellant argues that connectivity is not relevant here, as it can be easily accommodated subsequent to contract completion in other ways, by running cables between room 1101 and 1133, or through wireless connections. However, if cable was intended to originate in room 1133 as well as room 1101, it would also be logical to assume that the contract would have provided a means for connectivity to the outside world from room 1133 just as it did from room 1101. Appellant’s argument is unpersuasive.

The specifications state, “A cable tray system will be utilized throughout the office for the Security System Wiring and the Data/Comm Wiring. The Cable Tray shall extend into **Room 1101.**” There is nothing in the specifications that states that the cable tray system should extend into room 1133. However, drawing ER101 shows the cable tray extending into other rooms, including rooms 1133 and 1101. The significance of the statement, “The Cable Tray shall extend into **Room 1101,**” is therefore unclear. However, if this statement regarding room 1101 is to have any meaning, it would tend to support the single communications equipment room position.

Appellant argues that the ITR designation appearing on drawing 1133 means Interim Telecommunications Room, which supports its position that room 1133 was also intended to be a communications equipment room. However, the abbreviation “ITR” is not defined in the specifications. Accordingly, its meaning is unknown. If appellant interpreted it to mean “Interim Telecommunications Room” at bid time, without inquiring as to its meaning, it did so at its own risk.

The specifications state, “**Appropriate colored Patch Cables will be provided for each connection at the workstation and in Room 1101 to include Fiber Patch Cables,**” The specifications contain no such statement with regard to room 1133. This would seem to support the position that only room 1101 was intended as the origination point for the cabling.

Appellant argues that it was told prior to bidding that work in phases one and two must be performed in sequence, rather than simultaneously. It inferred from this direction that there would be two equipment communications rooms. Even if such a direction was issued, there is no reason to assume that some limited work could not be performed, as necessary, in the other phase. A direction of this type certainly would not preclude room 1101 from being the lone communication equipment room.

For the foregoing reasons, we find that the contract was patently ambiguous. Appellant did not inquire regarding the patent ambiguity at bid time, and it is therefore not entitled to an equitable adjustment.

Decision

The appeal is **DENIED**.

R. ANTHONY McCANN
Board Judge