



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION GRANTED;
DECISION MODIFIED: March 24, 2015

CBCA 3724-R

LEEWARD CONSTRUCTION CORPORATION,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Donald R. Adams, Project Manager of Leeward Construction Corporation, Fort Worth, TX, appearing for Appellant.

Lindsay C. Roop and Dennis M. McGuire, Office of Regional Counsel, Department of Veterans Affairs, Columbus, OH, counsel for Respondent.

Before Board Judges **POLLACK**, **McCANN**, and **ZISCHKAU**.

McCANN, Board Judge.

Respondent has moved for partial reconsideration of the Board's decision issued on January 26, 2015. *Leeward Construction Corp. v. Department of Veterans Affairs*, CBCA 3724, 15-1 ¶ 35,861. Respondent contends that the Board, in the quantum portion of its decision, *id.* at 175,338, incorrectly awarded appellant ten percent for profit and ten percent for overhead and should only have awarded appellant a ten percent fee. Appellant has declined to file a response to the motion.

Respondent is correct. In its initial decision, the Board determined appellant's fee by incorrectly applying subsection (4), rather than (5), of the Department of Veterans Affairs Acquisition Regulation (VAAR) 852.236-88(b) (48 CFR 852.236-88(b) (2011)). The subsections state:

(4) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and use of construction equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on the first \$20,000; 7-1/2 percent overhead and 7-1/2 percent profit on the next \$30,000; 5 percent overhead and 5 percent profit on balance over \$50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

(5) The prime contractor's or upper-tier subcontractor's fee on work performed by lower-tier subcontractors will be based on the net increased cost to the prime contractor or upper-tier subcontractor as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on the first \$20,000; 7-1/2 percent fee on the next \$30,000; and 5 percent fee on balance over \$50,000.

VAAR 852.236-88(b).

Since appellant is a prime contractor and the contract work was performed by a subcontractor, VAAR 852.236-88(b)(5) is the provision that applies here. Appellant is entitled to a ten percent fee, rather than ten percent profit and ten percent overhead.

Decision

Respondent's motion for reconsideration is **GRANTED**. The first sentence of the final paragraph of the discussion portion of the Board's decision is modified to read as follows: "Leeward is entitled to an additional ten percent fee."

R. ANTHONY McCANN
Board Judge

We concur:

HOWARD A. POLLACK
Board Judge

JONATHAN D. ZISCHKAU
Board Judge