



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: June 18, 2019

CBCA 6383

THE AULSON COMPANY, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Shaunna R. Jammal of The Aulson Company, Inc., Methuen, MA, counsel for Appellant.

Harold W. Askins, Office of General Counsel, Department of Veterans Affairs, Charleston, SC; and Donald Mobly, Office of General Counsel, Department of Veterans Affairs, Denver, CO, counsel for Respondent.

GOODMAN, Board Judge.

Appellant, The Aulson Company, Inc., alleges it is due compensation for extra work performed in addition to the requirements for a construction contract with respondent, Department of Veterans Affairs (VA).

Appellant elected to have this appeal processed under Board Rule 52, Small Claims Procedure (48 CFR 6101.52 (2018)). Under the small claims procedure, “[t]he presiding judge may issue a decision in summary form. A decision is final and conclusive, shall not be set aside except for fraud, and is not precedential.” Rule 52. The parties also elected to have this appeal processed under Board Rule 19, Record Submission Without a Hearing.

Background

On December 27, 2016, respondent awarded an indefinite-delivery indefinite-quantity multiple award contract, VA241-17D-0006, to appellant for asbestos abatement for the Veterans Integrated Network Services 1 facilities, which are a part of the VA New England Healthcare System. On April 2, 2018, the VA issued a notice of task order request for proposal for abatement services at the VA Medical Center in White River Junction, Vermont. The task order's scope of work described the following requirement:

Replace pipe insulation, pipe labels, firestopping, rebuild and paint sheet-rock chases following VA recommendations for metal stud and drywall, provide and install carpet tile or vinyl sheet goods to match in kind flooring type removed, and replace lay-in ceiling tile and grid, including installation/reconnection of lights and diffusers. Repaint all walls of affected rooms or otherwise marred by this work. Return space to usable office space.

Interested bidders were invited to conduct an accompanied site inspection on April 11, 2018. Questions asked during the walkthrough were recorded and subsequently responded to and distributed in an answered request for information (RFI) to all bidders by amendment 00001, which was issued by the contracting officer on April 20, 2018. This site-visit RFI—as it was referred to in amendment 001—included the following question and answer:

24. The intent is to paint all walls where a chase exists?

Answer: Paint chase, and walls that are disturbed by Chase demo/restoration. Refer to Attachment A, and finish plan that will be provided to contractor after award.

Attachment A, referred to in the answer to question 24, describes the required paint brands and finish types for different surfaces that were needed for pricing and sourcing the paint; it does not describe which walls must be painted after the asbestos abatement work. Even though mentioned in the answer, respondent has informed the Board that no finish plan was provided, as it was unnecessary, given the sufficient description in the finish schedule.

Amendment 00001 was issued on standard form 30, and its section for the description of amendment/modification explained:

The purpose of this amendment is to note the following[:]
Attached Site Visit and Portal RFIs with their answers[.]

All other terms remain the same. RFP Responses due date remains the same.

Appellant submitted its price proposal on April 25, 2018. Respondent awarded appellant task order 36C24118N1290 on May 10, 2018. During the course of performance, a dispute arose about whether appellant was required to paint all of the walls in the rooms in which abatement work occurred or just the walls that were affected by the work. In an email dated August 8, 2018, appellant averred that painting was limited to walls affected by the work, given the response provided in the site-visit RFI and that this was confirmed several times during one of the parties' first construction meetings. The contracting officer (CO) responded the next day in an email in which she quoted the specific RFI statement to which appellant was referring and asserted in part that it "does state that our intent is to paint the walls where the chase exists and disturbed areas. It does not exclude the remainder of the work required from the [statement of work]."

Appellant painted the additional walls as instructed and later submitted a claim for \$9514.49 on October 16, 2018. The CO denied the claim on February 8, 2019, and explained that "[u]nder the broadest of interpretations, the statement does not remove any requirements from the Statement of Work."¹ Appellant timely appealed the decision to the Board on February 15, 2019.

Discussion

This contract dispute turns on the interpretation of the task order—specifically, the site-visit RFI that was part of amendment 00001. Appellant avers that it is entitled to additional money for painting all of the walls in the rooms affected by the abatement work. Respondent denies this. The site visit RFI amended the scope of work when it was included in amendment 00001 to the task order. The Federal Acquisition Regulation (FAR) explains the purpose of issuing an amendment to a solicitation as follows:

If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by amendment of the invitation for bids using Standard Form 30, Amendment of Solicitation/Modification of Contract. The fact that a change was mentioned at a pre-bid conference does not relieve the necessity for issuing an amendment. Amendments shall be sent,

¹ The CO's reference to the language in the task order's scope of work indicates that she intended to cite to the scope of work rather than to the statement of work. The base contract's statement of work does not address the painting requirement.

before the time for bid opening, to everyone to whom invitations have been furnished and shall be displayed in the bid room.

48 CFR 14.208(a) (2016) (FAR 14.208(a)). Here, the contracting officer issued an amendment under standard form 30 in which the attached site visit RFI provided specifications that contradicted those in the task order's original scope of work. The statement in the description section explaining that "[a]ll other terms remain the same" further indicates the CO's intention to modify the task order's specifications.

"Contract interpretation begins with an examination of the plain language of the contract." *CFP FBI-Knoxville, LLC v. General Services Administration*, CBCA 5210, 17-1 BCA ¶ 36,648 at 178,474 (quoting *Ace American Insurance Co.*, CBCA 2876-FCIC, et al., 14-1 BCA ¶ 35,791, at 175,058). If the plain language of the contract "is unambiguous on its face, our inquiry ends, and the plain language of the contract controls." *Hunt Construction Group, Inc. v. United States*, 281 F.3d 1369, 1373 (Fed. Cir. 2002). Question 24 asked whether all of the walls in a room in which a chase existed needed to be painted. The answer limited the painting requirement to "walls that are disturbed by Chase demo/restoration." If the contracting officer intended for all of the walls to be painted, then a simple "yes" would have sufficed. Accordingly, as appellant asserts, the plain meaning of the answer to question 24 limits appellant's performance to painting just the rebuilt chases and walls that were disturbed by the chase demolition and restoration. Respondent has not disputed appellant's quantum submission with regard to the cost of the extra work. The Board has reviewed the quantum submission, and finds the costs reasonable. Appellant is therefore entitled to compensation for the requested amount.

Decision

The appeal is **GRANTED** in the amount of \$9514.49, plus interest accrued pursuant to the Contract Disputes Act, 41 U.S.C. § 7109 (2012).

Allan H. Goodman

ALLAN H. GOODMAN

Board Judge