



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: March 14, 2018

CBCA 5361

HAL-PE ASSOCIATES ENGINEERING SERVICES, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Nancy M. Camardo of Camardo Law Firm, P.C., Auburn, NY, counsel for Appellant.

Mary A. Mitchell, Office of General Counsel, Department of Veterans Affairs, Houston, TX; and Donald C. Mobly, Office of General Counsel, Department of Veterans Affairs, Denver, CO, counsel for Respondent.

GOODMAN, Board Judge.

Appellant, Hal-Pe Associates Engineering Services, Inc., alleges it is due compensation for extra work it performed in addition to the requirements of 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 (2011)). Under the small claims procedure, “[t]he presiding judge may issue a decision, which may be in summary form, orally or in writing. . . . A decision shall be final and conclusive and shall not be set aside except in the case of fraud. A decision shall have no value as precedent.” Rule 52. The parties also elected to have this appeal processed under Board Rule 19, Submission on the Record Without a Hearing.

Background

Appellant was awarded contract no. VA250-14-C-0061 by respondent for Remediation of Electrical Harmonics at the Veterans Affairs Ambulatory Care Center in Columbus, Ohio. Appellant alleges that it completed all the known requirements by January 30, 2015.

Respondent alleged that the project was not completed for a number of reasons including appellant's failure to collect post-installation data for the harmonic correction units which appellant installed. By cure notice dated April 8, 2015, respondent alleged that appellant had not provided the post-installation data for the units that would have been compiled from a metering that should have occurred for thirty days after installation.

On April 10, 2015, appellant responded to the cure notice, alleging that the post-installation monitoring was not required by the contract. Appellant and respondent communicated about the issue, and appellant ultimately performed the alleged extra work under protest.

On March 1, 2016, appellant filed a claim for equitable adjustment, demanding compensation in the amount of \$7272.17 for the costs expended in performing the alleged extra work. The contracting officer did not issue a final decision within the time required by the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012), and appellant filed this appeal from a deemed denial of the claim.

Discussion

During the proceedings in this appeal, respondent was directed to identify the provisions in the contract that respondent alleges required appellant to perform the work for which appellant seeks additional compensation. Respondent replied with various references to portions of the contract that allegedly "indicate" that the work in dispute was required, or alternatively show that respondent "expected" that the work would be performed.

The portions of the contract cited by respondent refer to power metering of harmonic distortion to be performed in advance of filter installation, but not again at the completion of the work as ultimately required by respondent. While the specifications state that "it is the goal of this project to verify that all overcurrent devices are properly set per the original design documents for selective coordination as required by the drawings and specifications," this is not a clear requirement for power metering and collection of data for thirty days after installation as alleged by respondent. The contractual references relied upon by respondent

do not support its position that the work at issue was required by the contract. Appellant is therefore entitled to compensation for the work performed.

Appellant's claim details the costs allegedly incurred to perform the work—labor, subcontractor costs, indirect cost, profit, and contract administration. Respondent has offered no analysis, rebuttal, or other evidence to question the incurrence or reasonableness of the costs. Having reviewed the evidence submitted, we find that costs were incurred and reasonable, and appellant is entitled to the costs in the amount claimed.

Decision

The appeal is **GRANTED** in the amount of \$7272.17, plus interest accrued pursuant to the CDA. 41 U.S.C. § 7109.

ALLAN H. GOODMAN
Board Judge