

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

DENIED: February 21, 2001

GSBCA 15082

TRATAROS CONSTRUCTION, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Robert J. Sciaroni of Bell, Boyd & Lloyd, Washington, DC, counsel for Appellant.

Jeremy Becker-Welts, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **NEILL** and **DeGRAFF**.

DeGRAFF, Board Judge.

Trataros Construction, Inc. and the General Services Administration (GSA) entered into a contract that required Trataros to perform construction work. The parties agree that during the course of the contract GSA changed its requirements for window colors and that the change increased the cost of the windows. The parties disagree, however, as to the amount by which the cost increased. Trataros elected to use the Board's accelerated procedure in order to resolve this appeal. See Rule 203 (48 CFR 6102.3 (1999)). A hearing was held. Trataros has not established that it is entitled to an equitable adjustment to the contract price in the amount that it claims. The contracting officer determined that the contract price should be increased by \$2794.97 in order to compensate for the change, and this increase is supported by the evidence. The appeal is denied.

Findings of Fact

On September 26, 1996, the parties entered into contract GS-02P-DTC-0033(N) for renovations and alterations to the United States Post Office and Courthouse Building in Old San Juan, Puerto Rico. The building was constructed in two phases, referred to as the 1914 building and the 1940 building. Exhibit 1. The contract said that the interior finish and the

exterior finish of the windows would be different colors. Exhibit 1 at 0988. GSA's construction manager read this to mean that, although the exterior of the windows would be painted one color and the interior could be painted a different color, all of the windows would have the same exterior finish color. Transcript at 209, 213-14. During the course of performance, GSA decided that it wanted the exterior finish color of the 1914 building windows to be different from the exterior finish color of the 1940 building windows. Transcript at 145, 172-73, 193.

Trataros's window subcontractor, P.W.S. International, Inc., was purchasing windows from Wausau Metals, and Wausau was purchasing paint from Linetec. Transcript at 146; Exhibit 10. In August 1997, P.W.S. told Trataros that supplying windows with two different exterior finish colors would cost an additional \$20,405. Exhibit 6. In September 1997, Trataros told P.W.S. to supply additional information to substantiate its added costs. Exhibit 8. In October 1997, Wausau provided P.W.S. with some information concerning the additional paint costs that would be incurred if it used different exterior finish colors for two groups of windows. Wausau said that there was an added set-up cost of \$550, a difference in paint cost of \$9855 (13,318 square feet of painted surface area at a cost of \$2.58 per square foot instead of \$1.84 per square foot), and additional labor costs of \$6600. Exhibit 10. There is no explanation in the record of the origin of the \$2.58 and \$1.84 per square foot figures, and no evidence to support those figures. Transcript at 160-61, 176. The added set-up cost was for cleaning and changing equipment when changing from one paint color to another. Transcript at 157, 220-21.

P.W.S. supplied windows with a total of 13,318 square feet of exterior painted surface area, which consisted of 7990 square feet with one exterior finish color and 5328 square feet with a different exterior finish color. Transcript at 160; Exhibit 10. In February 1999, Trataros sent GSA some information from P.W.S. concerning its additional costs. P.W.S. explained that the \$9855 of Wausau's added paint costs was attributable to the cost of the paint according to Linetec's price sheet (\$6792), plus overhead of 25%, profit of 10%, and commissions to inside and outside sales representatives of 5.5%. Linetec's price sheet showed that Linetec's price per square foot for "custom IHB colors" varied according to the number of square feet of painted surface area.¹ The price was \$1.26 for 13,318 square feet, \$1.31 per square foot for 7990 square feet, and \$1.44 per square foot for 5328 square feet. Exhibit 10.

On May 5, 1999, Trataros submitted a claim for \$20,576 for the added costs of supplying windows with two different exterior finish colors. This consisted of \$9855 in paint costs, \$550 in set-up costs, \$6600 in labor costs, profit of \$1700 for P.W.S., and Trataros's profit of \$1871. Exhibits 6, 12.

GSA's construction manager, O'Brien Kreitzberg, reviewed Trataros's claim. Using the prices contained in the Linetec price sheet and the square feet of exterior painted surface area in each of the two groups of windows, O'Brien Kreitzberg determined that the use of two colors instead of one would result in increased paint costs of \$1359, which it arrived at

¹ The prices for custom IHB colors are those relevant to this claim. Transcript at 227-28.

as follows. Using different exterior finish colors for two groups of windows would cost \$18,139 (7990 square feet at \$1.31 per square foot plus 5328 square feet at \$1.44 per square foot). Using one exterior finish color would cost \$16,780 (13,318 square feet at \$1.26 per square foot). The difference between \$18,139 and \$16,780 is \$1359. O'Brien Kreitzberg did not see why painting the exterior of some windows one color and other windows another color would result in an increase in labor costs because the number, size, and shape of the windows had not changed. O'Brien Kreitzberg agreed that additional set-up costs would have been incurred, and that an added amount of profit was due. Exhibit 13; Transcript at 211.

On July 8, 1999, the GSA contracting officer issued her decision. She agreed that the claim had merit because Trataros was not able to take advantage of the volume pricing discount that was available for the use of a single paint color. She determined that a fair and reasonable amount for the cost of the change was \$2794.97. This included an increase in paint cost of \$1359, an added set-up cost of \$550, plus profit as allowed by the contract. Exhibits 1 at 0179; 14.

No one from Linetec, Wausau, or P.W.S. testified at the hearing. An employee of Trataros provided the only explanation we have for the claimed increase in labor costs. He said that if windows were painted two different exterior colors, Wausau would have needed to spend added time separating pieces that were going to receive one paint color from those that were going to receive another paint color. Transcript at 166-67. The windows in the 1914 building were different from those in the 1940 building, however, and the pieces needed to make the windows for one building were not all the same as the pieces needed to make the windows for the other building. Transcript at 167-69, 215. An employee of O'Brien Kreitzberg testified that the differences between the two types of windows would have required Wausau to spend time handling two groups of pieces that made up the windows, and he did not see how any added handling was required simply because the exteriors of the two types of windows were painted different colors. Transcript at 217-19. Trataros's witness also suggested that the added costs might be due to the fact that the windows were painted one color on the interior side and another color on the exterior side. Transcript at 202. Trataros is claiming the costs that were claimed by P.W.S. and did not make any independent investigation of these costs. Transcript at 200, 206.

Discussion

If GSA made a change to the contract work that increased Trataros's costs, the contract requires GSA to make an equitable adjustment to the contract price to compensate for the added costs. Exhibit 1 at 0178-79. The parties agree that GSA changed the contract work by requiring Trataros to supply windows with different exterior finish colors, and that the change increased Trataros's costs. Complaint ¶¶ 4, 5; Answer ¶¶ 4, 5. They disagree, however, as to the amount by which the contract price should be adjusted due to the change.

Trataros contends that GSA should adjust the contract price by \$20,576 because P.W.S. billed Trataros for \$18,705 and because Trataros is entitled to a profit of ten percent (\$1871) added to the \$18,705. Appellant's Post-Hearing Brief at 2. The contract does not provide, however, that GSA will adjust the contract price by whatever amount a subcontractor bills Trataros. The contract says that GSA will make an equitable adjustment

to the contract price if Trataros's costs increased due to the change that GSA made to the requirements of the contract. The fact that Trataros received a bill from P.W.S. for \$18,705 does not establish that GSA's change to the contract resulted in added costs of \$18,705. As discussed below, the amount of P.W.S.'s bill is largely unsupported and is, in part, contradicted by documentation that accompanied the bill.

Trataros's request for \$20,576 consists of paint costs, set-up costs, labor costs, and profit. As for the set-up costs, Trataros established that there are costs associated with cleaning and changing equipment when changing from one paint color to another. The amount claimed for the added set-up costs is \$550 and GSA's construction manager accepted that as a reasonable amount. As for profit, the amount recoverable is established by percentage figures contained in the contract and there is no disagreement between the parties as to the figures that should be used to calculate the amounts due.

The parties agree that the paint costs increased, but disagree as to the amount of the increase. We do not know how P.W.S. and Wausau determined that the paint costs increased by \$9855, which is the amount that Trataros claims. The \$9855 is based upon the difference between paint costs of \$2.58 and \$1.84 per square foot, but we have no evidence in the record to show that these square foot costs are relevant to the contract work that was performed by P.W.S. and Wausau. Because these two figures have no support in the record, we cannot use them as the basis for adjusting the contract price. When O'Brien Kreitzberg determined the increase in paint costs, it based its calculations upon the Linetec price sheet and the square feet of exterior painted surface area in each of the two groups of windows. As O'Brien Kreitzberg determined, there is a difference of \$1359 between what it would have cost to paint all 13,318 square feet of surface area one color (\$1.26 per square foot), and what it would have cost to paint 7990 square feet one color (\$1.31 per square foot) and 5328 square feet a different color (\$1.44 per square foot). The Linetec price sheet and the number of square feet of exterior painted surface area are the only reliable pieces of evidence available for us to use in order to calculate the amount by which the paint costs increased. We determine that the increase amounted to \$1359.

The parties disagree as to whether labor costs increased due to the change. O'Brien Kreitzberg did not see why labor costs would have increased because the number, size, and shape of the windows had not changed. The Trataros witness thought that the added costs might be due to the fact that the windows were painted one color on the interior side and another color on the exterior side. The contract, however, provided that the exterior finish would be a different color from the interior finish, so any costs attributable to painting the exterior one color and the interior a different color are not due to a change to the terms of the contract. The Trataros witness also thought that the added labor costs might be due to separating pieces that were going to receive one paint color from those that were going to receive another paint color. The pieces needed to make the windows for one building were not all the same as the pieces needed to make the windows for the other building, however, and so different pieces for the different windows would have needed to be separated regardless of whether some of the pieces were painted at different times with different colors. There is no evidence to show that any additional labor was required to separate pieces due to the change in the contract, and so we have no basis upon which to conclude that an increase in labor costs was caused by GSA's decision to require the two groups of windows to be painted different colors.

Adding the \$550 for set-up costs to the \$1359 for increased paint costs and then applying profit percentages allowed by the contract results in an equitable adjustment to the contract price of \$2794.97. Trataros has not established that the contract price should be adjusted by anything more than this amount.

Decision

The appeal is **DENIED**. Trataros is entitled to be paid only the amount determined by the contracting officer, \$2794.97.

MARTHA H. DeGRAFF
Board Judge

I concur:

EDWIN B. NEILL
Board Judge