

Board of Contract Appeals

*General Services Administration
Washington, D.C. 20405*

GRANTED: February 21, 2001

GSBCA 15083

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. In this appeal, Trataros claims that during the course of the contract, GSA changed its requirement for fire sprinklers and that this change resulted in increased costs. Trataros elected to use the Board's accelerated procedure in order to resolve this case. See Rule 203 (48 CFR 6102.3 (1999)). A hearing was held. Because GSA made a change to the contract work that increased Trataros's costs, we grant the appeal.

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. The 1914 building has an attic area that is approximately the same elevation as the fourth floor of the 1940 building. Exhibit 1. The attic is a mechanical area that contains some electrical power panels and heating, ventilation, and air conditioning equipment. Transcript at 581, 613. The 1940 building has two towers that sit on the roof of the 1940 building's sixth floor. Exhibit 1. The towers are used as mechanical rooms. Transcript at 589. There are other mechanical rooms in the building. Transcript at 594-95.

Section 15326 of the contract's statement of work contains the specifications that apply to sprinkler systems. Paragraph 1.4 sets out a description of the sprinkler system and provides in part as follows:

Sprinkler System Protection Limits: All spaces within areas indicated. Include closets, toilet and locker room areas, each landing of each stair, and special applications areas.

Exhibit 1 at 1472. At the hearing, a GSA witness testified that mechanical and electrical equipment rooms are "special applications areas." Transcript at 610-11, 618. The term "special applications" is used once in section 15326 of the specifications, and there it refers to areas adjacent to detention cells. Exhibit 1 at 1485.

The contract contains four fire protection drawings, 9FP-1 through 9FP-4. None of the drawings mentions the attic or the towers, and none shows any of the features of those areas. Drawings 9FP-1 through 9FP-3 show the ground floor and the second floor, but do not show any areas above the second floor. Drawing 9FP-4 is the riser diagram. It contains eight horizontal lines spanning the width of the drawing, representing the ground floor, the first through the sixth floors, and the roof. The drawing shows two risers running up to just below the roof, and shows supply lines to the sprinkler system running from the risers at the ground through the sixth floors. The risers do not penetrate above the sixth floor into the roof and the drawing does not show that a supply line runs from the risers above the sixth floor or that a supply line runs from the risers to the 1914 building's attic. Exhibit 1. The drawing does not say whether it shows risers for the 1914 building or the 1940 building. Exhibit 1; Transcript at 603.

Paragraph 1.5 of section 15326 sets out the sprinkler system's performance requirements and provides that the maximum sprinkler spacing in mechanical equipment rooms is 130 square feet per sprinkler. Exhibit 1 at 1472. Trataros installed sprinklers in other mechanical rooms, but not in the towers or the attic. Transcript at 594-95.

The contract required Trataros to prepare sprinkler system drawings pursuant to requirements contained in National Fire Protection Association (NFPA) 13, "Standard for the Installation of Sprinkler Systems," and to submit those drawings for the approval of the authority with jurisdiction over fire protection systems. Exhibit 1 at 1471-73. The reviewing authority approved Trataros's sprinkler drawings. Transcript at 580-81, 592. The contract

also required Trataros to supply equipment, specialties, accessories, installation, and testing that complied with NFPA 13, NFPA 14, "Standard for the Installation of Standpipe and Hose Systems," NFPA 26, "Recommended Practice for the Supervision of Valves Controlling Water Supplies for Fire Protection," and NFPA 70, "National Electrical Code." Exhibit 1 at 1474.

In late August 1997, Trataros submitted request for information 322 to GSA's construction manager, O'Brien Kreitzberg. Trataros stated that its drawings did not show that sprinklers would be installed in the towers and it asked O'Brien Kreitzberg to agree that the towers did not need sprinklers. O'Brien Kreitzberg responded that sprinkler system coverage was required throughout the entire building, including the towers, and pointed out that there were "no system protection limits" contained in paragraph 1.4 of specification section 15326. Exhibit 6.

On November 13, 1998, Trataros informed GSA that providing sprinklers in the towers constituted a change to the contract that would cost Trataros \$1320, which included its subcontractor's costs and Trataros's markup. Trataros asked GSA to increase the contract price by that amount. Exhibit 7. In response, O'Brien Kreitzberg again pointed out that paragraph 1.4 of section 15326 did not contain any limitations upon the sprinkler system, and said that Trataros was responsible for determining branch pipe locations and for complying with NFPA 13 requirements. O'Brien Kreitzberg concluded that the contract required sprinklers in the towers. Exhibit 8.

On February 2, 1999, O'Brien Kreitzberg wrote to Trataros regarding the attic in the 1914 building. O'Brien Kreitzberg stated that Trataros had not provided a submittal showing any sprinkler work in the attic's mechanical/electrical room, and asked Trataros what its plans were for providing the submittal. Exhibit 9. Trataros responded on March 17, by submitting its proposal to provide sprinklers in the attic. Trataros considered this work to be in addition to the work required by the contract and asked for an increase in the contract price of \$16,830, which included its subcontractor's costs and Trataros's markup. Exhibit 10. O'Brien Kreitzberg replied that paragraph 1.4 of section 15326 required Trataros to install sprinklers wherever needed to meet the contract's NFPA requirements. Exhibit 11.

Trataros installed sprinklers in the towers and in the attic and paid its subcontractor for this work. Transcript at 588-89. On May 4, 1999, Trataros submitted a claim to the contracting officer for \$18,150 for additional sprinkler work. Exhibit 12. The contracting officer denied the claim on July 7, 1999. She concluded that the contract drawings, specifications, and NFPA required sprinkler coverage for all areas of the building. Exhibit 13.

Discussion

Trataros says that GSA's requirement for sprinklers in the 1940 building's towers and the 1914 building's attic constituted a change to the contract and that this change increased Trataros's costs by \$18,150. Appellant's Post-Hearing Brief at 1-2. GSA asserts that the contract required Trataros to provide sprinklers in the towers and the attic because the contract did not exclude those areas from sprinkler coverage. Respondent's Post-Hearing Brief at 2. The contract did not, however, require Trataros to install sprinklers throughout

the building, with certain exceptions. The contract, in paragraph 1.4 of section 15326 of the specifications, said that Trataros had to provide sprinkler system protection within “areas indicated.” Because nothing in the drawings or the specifications indicated that the towers and the attic were areas that required sprinkler system protection, we conclude that GSA’s requirement for sprinklers in those areas constituted a change to the contract.

The contract drawings do not indicate that Trataros was supposed to install sprinklers in the tower and attic areas. Drawings 9FP-1 through 9FP-3 show only the ground floor and the second floor, and not the towers or the attic. Drawing 9FP-4 shows risers starting at the ground floor and stopping just below the roof of the sixth floor. It also shows supply lines to the sprinkler system running from the risers in the ground floor and in each of the six other floors, but does not show any other supply lines, such as supply lines to the towers or to the attic. The 1940 building contains six floors above its ground floor and the towers sit on the roof above the sixth floor. The towers are outside of the limits of drawing 9FP-4 and the drawing does not show any of the features of the towers. Although the 1914 building’s attic is at approximately the same elevation as the 1940 building’s fourth floor, drawing 9FP-4 does not show any of the features of the 1914 building’s attic. Drawing 9FP-4 does not say whether the risers it shows are for only the 1940 building, or whether they are also for the 1914 building. In summary, no drawing contains a clear indication that the towers and the attic were supposed to receive sprinkler system protection.

The specifications do not indicate that Trataros was supposed to install sprinklers in the tower and attic areas. Paragraph 1.4 of section 15326 says that Trataros had to provide sprinkler system protection within “special applications areas.” GSA suggests, but has not established, that such areas included the towers and attic. Respondent’s Post-Hearing Brief at 2. Although one GSA witness testified that special applications areas include mechanical rooms, section 15326 uses this term in reference to areas adjacent to detention cells. We are not persuaded that paragraph 1.4’s requirement for sprinklers in special applications areas included a requirement for sprinklers in mechanical rooms. Paragraph 1.5 of section 15326 says that Trataros had to provide one sprinkler for every 130 square feet of space in mechanical equipment rooms. Paragraph 1.5 does not say that all mechanical rooms require sprinklers. Instead, it sets out the performance requirements that the sprinkler system would have to meet in mechanical rooms that were within the areas indicated to receive sprinkler protection.

GSA suggests, but has not established, that NFPA standards required Trataros to provide sprinkler system protection in the towers and the attic. Respondent’s Post-Hearing Brief at 2. The contract contained several requirements for compliance with NFPA standards. Trataros had to prepare sprinkler system drawings pursuant to NFPA 13 and to have those drawings approved by the authority with jurisdiction over fire protection systems. Presumably, Trataros’s drawings met the requirements of NFPA 13 because the appropriate reviewing authority approved its drawings. The contract also required Trataros to supply system components, to install the system, and to test the system in compliance with certain NFPA standards. GSA has not established what the NFPA standards required or that Trataros failed to comply with the standards.

Because GSA made a change to the contract work that increased Trataros’s costs, GSA must also make an equitable adjustment to the contract price to compensate for the

added costs. Exhibit 1 at 0178-79. GSA argues that Trataros has not established that its contract price should be adjusted by the \$18,150 it claims because there is testimony, but no documentary evidence, to establish that Trataros paid its subcontractor for this work. There is documentary evidence, however, that this is the amount Trataros's subcontractor expected to be paid for its work, plus Trataros's markup. In order to recover, Trataros has to establish only that it incurred an obligation to its subcontractor, and does not have to establish that it paid its subcontractor. The contract entitles Trataros to a markup. Exhibit 1 at 0179. The documentary evidence plus the uncontradicted testimony is sufficient to establish that Trataros is due an equitable adjustment to the contract price of \$18,150.

Decision

The appeal is **GRANTED**. Trataros is entitled to recover \$18,150 plus interest in accordance with 41 U.S.C. § 611 (1994).

MARTHA H. DeGRAFF
Board Judge

I concur:

EDWIN B. NEILL
Board Judge