

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

DENIED: February 21, 2001

GSBCA 15121

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. Trataros claims that during the course of the contract GSA changed its requirements for installing conduit in a stairwell and that this change resulted in increased costs. Trataros elected to use the Board's accelerated procedure in order to resolve the appeal, see Rule 203 (48 CFR 6102.3 (1999)), and a hearing was held. Because Trataros has not established that GSA changed the contract requirements, we deny 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 contract required Trataros to install new light fixtures in stairway number 5, which is an exposed area with walls that are finished with concrete and plaster. Exhibit 1; Transcript at 544, 554, 559. According to the contract specifications, Trataros was required to conceal electric conduit within finished walls, ceilings, and floors, "unless

otherwise indicated.” We found nothing in the contract to indicate that the conduit in stairway number 5 would be anything other than concealed. The contract specifications also required Trataros to cut, channel, chase, and drill floors, walls, partitions, ceilings, and other surfaces necessary for electrical installations; and to repair disturbed surfaces to match the adjacent undisturbed surfaces. Exhibit 1 at 1688, 1696.

On July 28, 1998, Trataros sent request for information number 603 (RFI 603) to GSA’s construction manager, O’Brien Kreitzberg. Trataros stated that its electrical subcontractor wanted to know how to route the wiring for the light fixtures that were to be installed in stairway number 5. O’Brien Kreitzberg responded that according to GSA’s architect, Finegold Alexander, the lights required surface conduit along steel beams and Finegold Alexander would have to visit the site with Trataros and agree upon a route for the conduit. Exhibit 6. There were no steel beams in stairway number 5. Transcript at 546, 568. When Finegold Alexander and Trataros made their field review, Finegold Alexander determined that the conduit had to be concealed within the concrete walls and ceilings. Exhibit 7.

On August 19, 1998, Trataros’s subcontractor sent Trataros a proposal for performing the cutting, chipping, and patching work needed to install concealed conduit in stairway number 5. The proposal price was \$3780. Exhibit 7. Trataros’s subcontractor did not perform the cutting, chipping, and patching work in stairway number 5. Instead, Trataros performed that work itself. Exhibit 10; Transcript at 540-41. We do not know what it cost Trataros to perform the work.

On June 15, 1999, Trataros asked GSA to pay \$4597 for installing concealed conduit in stairway number 5. Trataros arrived at this figure by taking the subcontractor’s proposed cost of \$3780 and adding a Trataros “mark-up” of 21% and 0.5% for bond costs. Exhibit 8.

On July 23, 1999, Trataros submitted a claim to the GSA contracting officer for an equitable adjustment to the contract price of \$4597. Exhibit 12. The contracting officer denied the claim on August 24, 1999, and this appeal followed. Exhibit 13.

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. Trataros contends that the contract drawings do not indicate that the conduit in stairway number 5 was to be concealed, that the response to RFI 603 permitted Trataros to install exposed conduit, and that the direction given during the field review to install concealed conduit constituted a change that increased Trataros’s costs. Appellant’s Post-Hearing Brief at 3-4.

In order to determine whether GSA changed the contract’s requirements, we must first determine what those requirements were. Trataros says that there is no indication in the contract drawings that the conduit in stairway number 5 would be concealed. The drawings, however, did not need to say to install concealed conduit, because the specifications clearly required Trataros to install concealed conduit in finished areas such as stairway number 5, unless otherwise indicated. We found no indication in the contract specifications or drawings that the conduit in stairway number 5 would be anything other than concealed. If there is a

contrary indication, it was Trataros's burden to call it to our attention and it did not do so. We conclude, therefore, that the contract as awarded required Trataros to install concealed conduit in stairway number 5.

The response to RFI 603 did not permit Trataros to install exposed conduit in stairway number 5 and the direction given during the field review did not constitute a change. The response to RFI 603 said that the lights required surface conduit along steel beams, and that a field review would have to be performed by Trataros and Finegold Alexander to determine where to route the conduit. The result of field review was as much a part of the response to RFI 603 as was the statement that the lights required surface conduit along steel beams. During the field review, the parties undoubtedly noticed that there were no steel beams in stairway number 5, and Finegold Alexander concluded that the conduit had to be concealed within the concrete walls and ceilings. The result of the field review, which was part of the response to RFI 603, was that Trataros had to install conduit in stairway number 5 just as the contract specifications required. Thus, the direction given during the field review did not constitute a change to the contract.

Decision

The appeal is **DENIED**.

MARTHA H. DeGRAFF
Board Judge

I concur:

EDWIN B. NEILL
Board Judge