

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

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DENIED: March 29, 2002

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GSBCA 15578

GBQC ARCHITECTS,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Ronald P. Kobelin, Principal of GBQC Architects, Philadelphia, PA, appearing for Appellant.

David M. Smith, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **BORWICK**, **NEILL**, and **HYATT**.

**HYATT**, Board Judge.

Appellant, GBQC Architects, has appealed the contracting officer's denial of its claim for additional compensation for services rendered in connection with contract administration of the construction of a new Department of Veterans Affairs (VA) building in Philadelphia, Pennsylvania. Following an unsuccessful attempt to resolve this appeal through alternative dispute resolution (ADR) techniques, the parties submitted the matter for decision on the written record without a hearing. Rule 111 (48 CFR 6101.11(a) (2000)). For the reasons stated herein, we deny the appeal.

Findings of Fact

1. On October 23, 1991, respondent, the General Services Administration (GSA),

entered into contract number GS-03P-92-CDC-0302 with Geddes Brecher Qualls Cunningham, now doing business as GBQC Architects. This fixed price contract was for the provision of architect/engineer (A/E) design services by GBQC for the construction of a new facility, the Philadelphia Veterans Center, in Philadelphia, Pennsylvania. Appeal File, Exhibit 1.

2. The contract consisted of base work, for predesign and concept A/E services, and a number of fixed price options, including an option to provide architectural contract administration services for the main construction phase of the project. These construction phase services, option 3, consisted primarily of the processing of submittals made by the general construction contractor, including shop drawings, equipment lists, material samples, and the like. The contract specifications applicable to the provision of architectural contract administration services further required that the architect process submittals in a timely manner so as not to delay the construction contractor's progress schedule. This option also provided separately for field visits and home office support, as requested by GSA. GBQC submitted a fixed price bid of \$779,743 for construction phase administrative services. Appeal File, Exhibit 1 at §§ 3.6.1-.2.

3. GSA awarded the general construction contract, with a contract schedule duration of twenty-two months, to R. M. Shoemaker Company (RMS), establishing a contract completion date in May 1996. In a modification to RMS's contract, design deficiencies are identified as the reason for a thirty-two day extension of the contract completion date to June 19, 1996. Appeal File, Exhibits 2, 19.

4. GSA exercised option 3 for the provision of construction phase services in amendment number P025, issued on July 11, 1994.<sup>1</sup> GBQC's price for this option work was increased to reflect additions and deletions under modifications to the work in other phases and the two-year contract completion date was extended to July 11, 1996. Appeal File, Exhibit 3. Amendment number PC30, dated November 2, 1994, was issued to compensate GBQC for the escalated cost of performing this option as a result of a one-year delay in the start of the construction phase. Id., Exhibit 4. Another amendment, number PC31, was issued to compensate for additional costs attributable to the extension of the procurement phase of the project. Id., Exhibit 5.

5. On December 2, 1994, GBQC wrote to Otto Schick, at GSA, noting that RMS, the contractor selected to construct the building, was "aggressively pursuing a 20 month construction schedule while the A/E team is limited to staffing in accordance with a 24 month construction schedule." GBQC further asserted that it could not "incur the unreimbursed cost to hire or assign staff in anticipation of submissions or to respond to an accelerated schedule." Appeal File, Exhibit 6.

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<sup>1</sup> Although the option was part of the original contract to provide design services for the building, the parties have consistently referred to the two year construction services option as a "contract" for purposes of this appeal. Thus, hereafter in this decision, references to the contract between appellant and respondent mean the option services.

6. On February 10, 1995, bilateral modification PA34 was issued. This modification states as follows:

THIS MODIFICATION IS ISSUED TO CLARIFY THE NEGOTIATED SETTLEMENT FOR THE NEW CONSTRUCTION ADMINISTRATION PHASE, SPECIFICALLY THE TECHNICAL CONTENT OF THE HOME OFFICE SUPPORT AND CONSTRUCTION ADMINISTRATION PHASES.

THERE IS NO COST IMPACT TO EITHER PARTY UNDER THIS SETTLEMENT, JUST A REDISTRIBUTION OF FUNDING CATEGORIES.

1. \$100,000 IS SHIFTED FROM THE HOME OFFICE SUPPORT CATEGORY TO THE CONSTRUCTION ADMINISTRATION SERVICES CATEGORY, AND ALL DESCRIBED SERVICES WOULD BE TREATED WITHOUT CONSULTATION OR INDIVIDUAL APPROVAL FROM GSA. THE TOTAL AMOUNT OF CONSTRUCTION ADMINISTRATION SERVICES WOULD INCREASE FROM \$519,169.00 TO \$619,169.00.
2. THE HOME OFFICE SUPPORT CATEGORY WOULD BE DECREASED FROM \$198,382.00 TO \$98,382.00.

Appeal File, Exhibit 7. In essence, this modification allowed GBQC to bill for and be paid an additional \$100,000 for providing the submittal review services, and decreased the level of home office support services that would be ordered by GSA on an "as needed" basis.

7. In a letter dated June 20, 1995, GBQC informed GSA that

A number of times throughout the design, building documentation and construction to date we have advised GSA that the construction schedule which is in the GC contract is overly ambitious, resulting in out of sequence submissions, improperly prepared submissions, inadequate review time, construction prior to submission and approval, etc, etc. GBQC has always believed that the correct construction schedule for this project is 24 months which is the basis for our contract with GSA. This duration was what we convinced GSA was reasonable and was reduced from the 33 months GSA had established for construction.

Appeal File, Exhibit 10.

8. On February 12, 1996, GBQC sent another letter to GSA summarizing its position as of that date. The letter alludes to prior discussions between various GSA and GBQC personnel and asserts that the outcome of meetings was that GBQC had agreed to accelerate construction administration support phase services to do everything reasonably within its capability to assist the general contractors to meet their construction schedule. In addition, GBQC recognized that a portion of home office support services and dollars were

reallocated from an hourly to a fee basis. The letter requested an adjustment to the payout schedule under the contract but also noted that there had been no increase in basic contract fees to compensate GBQC for the acceleration of its services to accommodate the general contractor's attempt to achieve its planned twenty-month schedule. Appeal File, Exhibit 11.

9. On April 3, 1996, GBQC wrote GSA's contracting officer and stated its opinion that it would be necessary to extend the contract completion date for the architect's services from May 1996 through July 1996. GBQC submitted a proposal for a monthly fee of \$30,000. Appeal File, Exhibit 12.

10. On May 10, GBQC wrote a follow-up letter addressing a conversation held with the contracting officer after April 3, reminding GBQC that its written contract identified July as the completion date. In response to this point, GBQC states that it had overlooked the original completion date and would have requested a modification of that date to reflect the acceleration of services had it recalled the date. GBQC added that it had provided the services and should be compensated appropriately. Appeal File, Exhibit 13.

11. On May 17, 1996, the GSA contracting officer responded to GBQC's May 10 letter, pointing out that modification P025 established a completion date of July 11, 1996, and that the two-year performance period for GBQC's administrative services under the contract's construction phase ran until the same date. The contracting officer further noted that if the need for GBQC's services extended beyond July 11, 1996, GSA would prefer to procure such services on an hourly basis. Appeal File, Exhibit 14.

12. GBQC responded to the letter of May 17 in a letter dated May 23, 1996. Appellant conceded that the completion date for its two-year contract to provide construction administration services was July 11, 1996, but continued to maintain that to accommodate the efforts of GSA and the construction contractor to shorten the construction schedule, it had been required to provide an increased level of architect/engineering services for which it had not been compensated. More specifically, GBQC contended that although the shortened schedule had not been achieved, it had to respond to an undue level of uncoordinated, incomplete, and even late, shop drawing submissions occasioned by the effort to accelerate the schedule. The letter included a request for modification of the contract price in the amount of \$107,583.86 to compensate for the extra services not, in appellant's view, included in the base contract. Appeal File, Exhibit 15.

13. On July 18, 1996, a bilateral modification of GBQC's contract was issued to extend the construction phase services for a one-month period, from July 12 to August 11, 1996, in an amount not to exceed \$30,000. Appeal File, Exhibit 18. GBQC's construction phase services contract was similarly modified an additional three times, for one-month periods, and for incremental amounts not to exceed \$30,000 each, extending the contract through November 11, 1996. Id., Exhibits 20-22. The construction phase services contract was extended for an additional four months, through March 11, 1997, in modification PS61. Id., Exhibit 24.

14. By letter dated January 17, 1997, GSA responded to appellant's letter of May 23, 1996, disagreeing with GBQC's assertion that it was owed additional monies for the provision of administrative support services in the construction phase of the contract. In

particular, GSA noted the various modifications already providing added compensation for GBQC, and further pointed out that no new staff members had been added by GBQC to perform this allegedly accelerated work and that base contract work, such as the construction contractor's requests for information (RFIs), had in fact been delayed such that GSA was not persuaded that GBQC had put additional efforts into helping RMS and the Government achieve an accelerated project schedule. Appeal File, Exhibit 23.

15. By letter dated January 24, 1997, GBQC responded to GSA's January 17 letter, again maintaining that the company had not been compensated for extra services provided under the contract for construction phase services. GBQC stated that "while the Government may never have approved the shortened schedule submitted by the general contractor, it did not inform GBQC accordingly, and to the contrary requested/verbally directed GBQC to restructure project staffing to accommodate the Contractor's needs to achieve a twenty month schedule." GBQC also challenged the Government's assertion that it had not added any new staff members to perform work on the contract and argued that the appropriate measure of added costs is the number of hours of service provided. Appeal File, Exhibit 25.

16. Thereafter, additional correspondence was exchanged in which both parties essentially continued to maintain the correctness of their respective positions. Appeal File, Exhibits 26-27. GSA eventually agreed to convene a panel of GSA employees not involved in the administration of this contract, to review GBQC's claim and the contract documents. These employees evaluated the claim and the materials submitted by GBQC, as well as the contract documents, and concluded that there was no basis to pay GBQC any additional monies for providing accelerated, or compressed, services under the construction phase services contract. Id., Exhibits 28-30. In a letter dated January 14, 2000, GSA informed GBQC that the panel had completed this process and determined that there was no basis for the architect's claim. Id., Exhibit 33.

17. In a letter dated April 17, 2000, GBQC formally submitted its certified claim for the amount of \$107,583.86 to the contracting officer and requested that a decision be rendered. Appeal File, Exhibit 38. By letter dated February 16, 2001, the contracting officer denied GBQC's claim:

Your claim for additional funds for an alleged acceleration of the construction contractor's schedule which you state impacted your work is denied for reasons stated below and as outlined in previous correspondence . . . . You were compensated for any additional work which you performed in various modifications to your contract. Modification PA34 gave GBQC direct compensation of \$100,000 [from] funds that were earmarked for home office support services that were to be ordered by GSA on an as-needed basis. Modification PC30 escalated the price for construction phase services by \$34,404.52. Modification PC31 compensated you for an extension to the procurement phase in the amount of \$20,000.00. Further, your structural steel design deficiency caused the Government to be liable to pay the construction contractor for a one month delay and the Government has elected to forbear recovery of those monies

paid to date. Based on my review of the facts related to your work under this contract, there is no entitlement to any monetary compensation by your firm.

Id., Exhibit 39. GBQC filed its appeal at the Board after receiving this decision.

### Discussion

The gravamen of GBQC's appeal seems to be that because it had a two-year contract to provide construction phase administrative services on this project, GSA should have held the general construction contractor, RMS, to a corresponding twenty-four month contract performance period. Instead, GBQC argues, GSA awarded a contract to the general construction contractor with a twenty-two month performance period and then permitted the general contractor to pursue an aggressive twenty-month completion schedule, causing GBQC to have to "accelerate" its provision of administrative services with respect to the review of submittals of shop drawings and the like. Essentially, GBQC contends, it was forced to expend its expected allocation of resources to this project earlier in the contract than anticipated, and then had to continue to provide services for several additional months because RMS's attempt to achieve an earlier completion date for construction did not succeed. GBQC maintains that if RMS had achieved its early completion date there would be no claim because GBQC would not have had to provide services for the full two-year period of its contract. Since RMS did not finish early, however, GBQC believes it should be compensated for the additional efforts it had to provide in the last two months or so of its contract for construction phase services.

GSA, for its part, points out that GBQC entered into a two-year firm fixed-price contract to supply construction administration services. The contract did not address the timing of submittals to be reviewed and approved under this contract, nor did the contract obligate GSA to hold the contractor to a two-year construction schedule that would dovetail with the administrative services contract between GSA and GBQC. GSA never approved a twenty-month schedule for construction. Moreover, to the extent the construction contractor may have attempted to accelerate its performance, that effort clearly came to naught early in the process for various reasons, including design deficiencies attributable to GBQC that delayed the progress of construction. GSA also suggests that GBQC was frequently late in responding to submittals, thus negating appellant's contention that it accelerated its efforts. Ultimately, as shown by the numerous modifications extending the architect's contract for construction phase services, it took significantly longer than two years to complete construction. GBQC was fully compensated for these time extensions and for an initial delay in starting construction. Moreover, GSA moved \$100,000 from the home office services category, which funds were payable only to the extent GSA actually ordered services, to the construction administration services category, under which GBQC was paid automatically in monthly increments. This funding shift should have offset any difficulty experienced by any imbalances in the submittal review process attributable to the perceived accelerated schedule pursued by the general contractor. Finally, GSA asserts, even if the Government might somehow be said to have constructively changed the contract work, GBQC has not proven that it incurred any uncompensated costs as a result of the construction contractor's alleged efforts to accelerate the progress of the work.

In order to prevail in its quest for an equitable adjustment, GBQC bears the "essential burden of establishing the fundamental facts of liability, causation, and resultant injury." Wunderlich Contracting Co. v. United States, 351 F.2d 956, 968 (Ct. Cl. 1965); see also Servidone Construction Corp. v. United States, 931 F.2d 860, 861 (Fed. Cir. 1991); Twigg Corp. v. General Services Administration, GSBCA 14386, et al., 00-1 BCA ¶ 30,772, at 151,975. GBQC has not met this burden. Not only do the facts of record fail to give rise to a valid basis for recovery under any applicable legal tenet, but GBQC's claims that it incurred "added" expenses under this contract are unsupported by any hard data showing what added costs it actually incurred.

This was a firm fixed-price contract to provide architectural support services for the specified two-year period. Absent a contract clause providing otherwise, the risk that the cost of performing the contract will exceed the contract price is borne by the contractor under a firm fixed-price contract. See Dalton v. Cessna Aircraft Co., 98 F.3d 1298, 1304-05 (Fed. Cir. 1996); J. S. Alberici Construction Co. v. General Services Administration, GSBCA 12386, 94-2 BCA ¶ 26,776, at 133,172; Sagebrush Consultants, IBCA 4182-2000, 01-1 BCA ¶ 31,159, at 153,913. This contractor designed the project and presumably was in a reasonably good position to estimate what the cost of providing the necessary support services would be. The contract did not limit GBQC's obligations to the provision of a specified number of hours of review services. Nothing in the contract promised that the general construction contractor would proceed on a schedule that would dovetail precisely with the two-year administrative services contract between GSA and GBQC. It is not unusual for the review of shop drawings and other submittals to be concentrated in the early months of performance under a construction contract. GBQC has provided no evidence that the level of submittals under this contract exceeded what could customarily be anticipated, or that it was forced to review more submittals than should have been required under this type of contract. It simply complains that it had to contend with more submittals than it expected in the early stages of contract performance and had to devote more resources than it had anticipated at that time. This is a risk that GBQC assumed under the contract it entered into.

Similarly, the fact that RMS had a twenty-two month contract while GBQC's construction phase services contract was for twenty-four months does not constitute a basis for recovery. GSA has persuasively explained that it made sense for GBQC's contract to have a somewhat longer duration than the construction contractor's performance period so that the architect would be available to tie up loose ends and provide punch list services as needed. GBQC has not adduced any persuasive proof that the different contract periods resulted in a higher level of work than would have been required had the two durations been the same.

Although GBQC maintains that it was essentially directed to "accelerate" the work under the contract to conform to RMS's schedule, there is no evidence that the Government ever took any action that served to "change" GBQC's contractual obligations or agreed in any way to "shorten" appellant's performance period under its contract. In a recent decision issued by the Armed Services Board of Contract Appeals, a maintenance contractor alleged that the Government compressed delivery orders under the contract into an abbreviated time frame and rushed the contractor to complete work by the end of the fiscal year. The

contractor had apparently assumed that the work would be evenly spread over the course of the contract's base year. In noting that the contractor had not shown that it incurred any unusual costs or loss of efficiency and productivity attributable to the so-called compression of the work, the board observed that "[t]he contract guaranteed neither a certain amount of work or any particular timing of the work ordered" and rejected the contractor's claim for acceleration costs. SAWADI Corp., ASBCA 53073, 01-1 BCA ¶ 31,357, at 154,857-58. Likewise, GBQC's contract did not establish a specified level of effort or any particular timing for the administrative work to be required.

Appellant's claim fails for lack of proof. Modification PA34 made no mention of any alteration in the agreement other than the reallocation of funding. There is no other contemporaneous documentation in the record showing an agreement between the parties to condense the performance period under appellant's contract or any action by GSA that effectively directed GBQC to accelerate. GBQC's contract does not establish any particular level or pace of work. Appellant's unsupported allegations are insufficient to establish that the Government constructively accelerated its contract performance so as to justify an equitable adjustment to GBQC's contract price. See Hoffman Construction Co. v. United States, 40 Fed. Cl. 184, 201 (1998); see also Luria Brothers & Co. v. United States, 369 F.2d 701, 713 (Ct. Cl. 1966). GBQC simply has not proven by a preponderance of the evidence that any act or omission of GSA's caused it to incur additional costs under this contract.

Decision

The appeal is **DENIED**.

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CATHERINE B. HYATT  
Board Judge

We concur:

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ANTHONY S. BORWICK  
Board Judge

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EDWIN B. NEILL  
Board Judge