

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

DENIED: February 26, 2003

GSBCA 15868

EPIC ENERGY,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Erik Pedersen, President and Project Manager of EPIC Energy, Idaho Falls, ID,
appearing for Appellant.

Leigh Anne Bunetta, Office of Regional Counsel, General Services Administration,
Denver, CO, counsel for Respondent.

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

GOODMAN, Board Judge.

Appellant, EPIC Energy, filed this appeal on May 7, 2002, from the General Services Administration (GSA) contracting officer's final decision dated February 25, 2002, denying appellant's claim for additional costs arising from performance of its contract with appellant. The parties elected to submit the appeal for decision on the written record pursuant to Board Rule 111. We deny the appeal.

Findings

1. GSA issued solicitation no. GS-08P-00-VEC-0039 on October 10, 2000. Appeal File, Exhibits 1, 2. The work to be performed was the installation of a new electrical distribution system for the Bennett Federal Building in Salt Lake City, Utah. Three amendments were issued to the solicitation. Id., Exhibits 3-5.

2. Appellant was awarded GSA contract no. GS-08P-00-VEC-0039 on December 18, 2000, with an initial completion date of August 28, 2001. The initial contract amount was \$1,083,661. Appeal File, Exhibit 6.

3. Periodic coordination meetings were attended by representatives of GSA; appellant; GSA's construction management contractor, EFT; and EFT's electrical subcontractor, Spectrum. During those meetings, discussions were held concerning requests for information (RFI) and other project related issues. Appeal File, Exhibits 7, 9-16, 18-22.

4. Appellant submitted RFI no. 14 to EFT on March 13, 2001. The RFI read as follows:

Please advise regarding the misaligned electrical closets on the 1st and 2nd floor SW corner of the building. We would like to pass the 3-4" conduits on the South side of the new wall that will go along the South wall of the lobby. The new wall will line up with the back wall of the electrical closet on the 2nd floor. In addition we will bring one 2" conduit from the 2nd floor to the basement and then proceed to the 1st floor Electrical closet that is out of alignment.

Appeal File, Exhibit 8.

5. EFT replied to the RFI by attaching a drawing and approving appellant's proposed solution. EFT's response also stated:

Please see the attached drawing sheet for proposed routing of the feeders from the basement to the 2nd Floor SW electrical closet. The routing shown works with the current configuration of the Main Lobby, as well as the planned First Impressions remodel of this area.

Appeal File, Exhibit 8.

6. Change request no. 14 was negotiated on May 5, 2001, in response to the aforementioned RFI. This change request was for a no-cost change order and led to the issuance of modification no. PS10 with no additional cost to the Government. Appeal File, Exhibit 17.

7. During the contract performance period, appellant submitted fifty-four RFIs that resulted in the issuance of twenty-one change requests and seventeen modifications. Seven of the modifications extended the contract completion date by a total of 156 days (116 days were to account for a change from weekday to weekend work). The final contract

completion date was February 1, 2002. Additionally, the contract amount was increased to \$1,188,141, a total increase of \$104,480. Respondent's Record Submission ¶ 8.

8. By letter dated January 30, 2002, appellant submitted its claim to the contracting officer for additional work associated with installing the southwest riser. The claim read as follows:

EPIC Energy is hereby filing a claim, in the amount of \$20,571, for additional work required to run the S.W. riser from MSB [main switchboard] through the 3rd floor N.W. electrical closet and above the 3rd floor ceiling to the 3rd floor S.W. electrical closet, rather than directly from MSB to the 3rd floor S.W. electrical closet. Details are as follows:

In our bid, and from the inception of the contract, EPIC planned to run the S.W. riser directly from MSB to the 3rd floor S.W. electrical closet. Our estimate was that this would require 150' 8X8 wireway, 2, 100' 500 MCM [multi chip module] wire, and grounds.

After work on the contract commenced, it was observed that access to the third floor S.W. electrical closet was going to be very difficult. In an attempt to make the run from MSB easier, a "no cost" change order (PS010) was negotiated, which would run the S.W. riser wireway inside an electrical chase wall between the first and third floors.

At the beginning of the project, EPIC was made aware of the modification to the front of the Bennett Federal Building, called First Impressions. First Impressions would have extensively modified the area where the S.W. riser was to be run, and the attendant demolition of the second and third floor ceilings would have made the S.W. riser installation significantly easier. However, EPIC was informed that funding for the First Impressions work was currently not available, and, if funded, the work would not take place until the second quarter of 2002, long after the S.W. riser was to have been completed.

Of the four risers, EPIC scheduled the installation of the S.W. riser last. When we were ready to commence work on the S.W. riser, observation of the space between the first and second floor in the S.W. quadrant, though limited because the space was so difficult to access, showed the area where the S.W. riser was to be run was occupied by a maze of conduit, making the direct run from MSB to the third floor electrical closet impossible. EPIC considered running flexible conduit through this space, but concluded that this was also impossible. At that time (mid October, 2001), EPIC was still being told that the First Impressions work was to commence during the second quarter of 2002, i.e. still too late to have any influence on how the S.W. riser was run.

In order to meet the increasingly tight construction schedule, EPIC decided to run the S.W. riser from MSB to the 3rd floor N.W. electrical closet, then above the 3rd floor ceiling to the 3rd floor S.W. electrical closet. This work was started October 24, 2001, and completed November 8, 2001.

In mid-December, our Site Superintendent, Tom Jacques, looked behind the plywood barricade erected on the first floor, and discovered that the First Impressions demolition work was well under way, and that the S.W. quadrant 1st floor ceiling had been removed. With the ceiling removed, EPIC immediately saw a way that the S.W. riser could have been run through the maze of conduit above the first floor ceiling, which would have obviated the necessity of running the S.W. riser through the 3rd floor N.W. electrical closet. If EPIC had known the actual timing of the First Impressions demolition work, we would have waited for that work to be complete before installing the S.W. riser, thus making the additional run through the 3rd floor N.W. electrical closet unnecessary.

It appears that there was a breakdown of communications between the First Impressions project and EPIC's Electrical Distribution System Replacement project. If EPIC had known the timing of the First Impressions demolition work, we would have waited to run the S.W. riser until that demolition work was complete, and then run the S.W. riser directly from MSB to the S.W. electrical closet.

The additional run of wireway and wire through the N.W. riser to the 3rd floor N.W. electrical closet, then above the 3rd floor ceiling to the 3rd floor S.W. electrical closet, cost EPIC an additional \$20,571 in materials and labor. Details of these additional expenses are attached. EPIC Energy respectfully requests reimbursement for these additional expenses.

Appeal File, Exhibit 23.

9. The contracting officer requested input from her technical advisers and was advised that the claim was without merit. Appeal File, Exhibits 24, 30.

10. The contracting officer denied appellant's claim by final decision dated February 25, 2002. The contracting officer's final decision included the comments of her technical advisers and read in relevant part:

With regards to the southwest riser issues as designated in your enclosed letter, the findings are as follows:

1 . Southwest Riser Feeder - Bid Routing per EPIC: EPIC indicates in the claim that *"in our bid, and from the inception of the contract, EPIC planned to run the S. W. riser directly from MSB to the 3rd floor S. W. electrical closet."* The bid documents are clear that the 0 floor S.W. electrical closet is offset from the remainder of the closets in the southwest quadrant of the building. Also, this was specifically noted in the pre-bid walk thru of the project. The feeder routing for the southwest riser was offset from the beginning of the project - additional costs are not justified for incorrectly assuming direct routing of this portion of the project.

2. Change Request (PS10): The difficulty in routing the southwest riser was noted during construction by EPIC and a 'No Cost' change was negotiated to route the riser via the main lobby thru a chase created by EPIC (RFI-1 #14). Also, EPIC noted that, *"EPIC considered running flexible conduit through this space, but concluded that this was also impossible. At that time (mid October, 2001), EPIC was still being told that the First Impressions work was to commence during the second quarter of 2002, i.e. still to [sic] late to have any influence on how the S. W. riser was run."* Please note that the area in question had an accessible ceiling prior to the demolition work - so an alternative location could have been developed. Finally our technical representative does not agree that the installation was 'impossible' - the installation could have been installed utilizing flexible conduit in this area. Again, additional costs are not justified due to these circumstances.

3. First Impressions Work: The timing of the First Impressions project was not in control of any parties involved in this project. Also, based on the original and modified schedules from EPIC, the work on the S.W. riser should have been completed prior to the beginning of the First Impressions project. The timing of the First Impressions project is not a reason for additional cost to this project in this case.

Based on the above findings, your claim is denied.

Appeal File, Exhibit 25.

11. Appellant filed a notice of appeal of the contracting officer's final decision with this Board and the appeal was docketed as GSBCA 15868. Appeal File, Exhibit 29.

12. On June 3, 2002, appellant filed a complaint in the appeal which restated the allegations of the claim and contained additional allegations. Complaint.

13. The parties initially elected to submit the appeal for alternative dispute resolution. After a discussion with the Board, the parties decided to submit the appeal for a decision on the written record.

14. Respondent filed a record submission on July 16, 2002, and appellant filed a response on August 15, 2002.

Discussion

This appeal is from respondent's contracting officer's decision denying appellant's request for additional compensation arising from its contract with respondent to perform work at the Bennett Federal Building in Salt Lake City, Utah. Appellant alleges that it had planned to perform certain work, routing the southwest riser, in a specific way. Finding 8.

Appellant also alleges that it was made aware by GSA of additional work being performed in the building under another contract administered by GSA, known as the First Impressions project, but GSA told appellant that funding for the First Impressions work was

at that time not available, and if funded, the work would not take place until the second quarter of 2002, long after the southwest riser was to have been completed. Appellant scheduled the construction of the southwest riser last of the four risers. Finding 8.

When appellant began to construct the southwest riser, it realized obstructions existed that prevented the work from being accomplished as planned, and appellant proposed an alternate installation. Finding 4. Appellant submitted an RFI proposing the alternate installation and agreed to perform the alternate installation at no additional cost to the Government. Findings 5,6. However, appellant did not follow the alternate installation as agreed in the modification but performed a different installation. Appellant alleges it performed the work as it did in order to "meet the increasingly tight construction schedule." Construction of the riser took place between October 24 and November 8, 2001. Finding 8.

During contract performance, appellant submitted fifty-four RFIs that resulted in the issuance of twenty-one change requests and seventeen modifications. Seven of the modifications extended the contract completion date by a total of 156 days (116 days were to account for a change from weekday to weekend work). The final contract completion date was February 1, 2002. Additionally, the contract amount was increased to \$1,188,141, a total increase of \$104,480. Finding 7. There is no explanation in the record as to why appellant failed to seek government direction or submit an RFI or change order request before it performed the work on the southwest riser as it did, after it had previously entered into an agreement to perform the work by using a different method at no additional cost to the Government.

Appellant alleges further that in December 2001 its site superintendent looked behind the plywood barricade erected on the first floor and discovered that the First Impressions demolition work was well under way. He realized that, because of the state of the demolition work, "[if] EPIC had known the actual timing of the First Impressions demolition work, we would have waited for that work to be complete before installing the [southwest] riser, thus making the additional run through the 3rd floor [northwest] electrical closet unnecessary." Finding 8.

Appellant filed a claim on January 30, 2002, in the amount of \$20,571, for additional work required to run the southwest riser (wireway and wire) from main switchboard (MSB) across the building's basement, up to the third floor northwest electrical closet, above the third floor ceiling to the third floor southwest electrical closet. Finding 8. Respondent's contracting officer denied the claim. Findings 9,10.

Based on the circumstances as described by appellant, we deny appellant's claim. When appellant determined that it was not able to perform the work as planned, it proposed an alternate installation. Appellant entered into a contract modification in which appellant agreed to perform the alternate installation at no additional cost to the Government. Appellant subsequently elected not to follow the agreed-upon alternate installation but instead decided to adopt what it alleges was a more costly routing of the wiring. There is no evidence that this approach was ever discussed with the respondent or agreed to by the parties. Appellant is bound by the modification which it executed. Appellant's subsequent conclusion that it could have performed the work without incurring additional costs if it had been informed of the timing of the adjacent work does not entitle appellant to compensation,

nor does it explain why appellant originally agreed to perform the work at no additional cost by an alternate method or subsequently actually performed the work by a different method than agreed.

Decision

The claim is **DENIED**.

ALLAN H. GOODMAN
Board Judge

We concur:

EDWIN B. NEILL
Board Judge

MARTHA H. DeGRAFF
Board Judge