

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

DENIED: October 27, 2003

GSBCA 16130

MITCHELL ENTERPRISES, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Steve Mitchell, President, and Tim Mitchell, Vice President, of Mitchell Enterprises, Inc. Sherman, TX, appearing for Appellant.

Catherine Crow, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

DANIELS, Board Judge (Chairman).

Mitchell Enterprises, Inc. (Mitchell) holds a contract with the General Services Administration (GSA) to construct the new United States courthouse in Laredo, Texas. Mitchell claims that it is entitled to be paid \$40,301.28 more than the contract price to cover costs that it and two of its subcontractors incurred to anchor parts of the curtainwall system to the building structure. Mitchell contends that the work in question is additional to contract requirements.

The contracting officer denied this claim on the ground that the contract directed Mitchell to anchor the curtainwall to the structure in any way it saw fit (provided that various performance specifications were met), so any costs involved in making the attachment were Mitchell's responsibility. We agree with the contracting officer and deny the claim.

Mitchell elected to have this case considered under the small claims procedure, 41 U.S.C. § 608 (2000); Board Rule 202 (48 CFR 6102.2 (2002)). The consequence of this election is that the Board's decision is being issued by a single judge, is not precedential, and is final and conclusive unless fraud is found to have tainted the Board's proceedings. 41 U.S.C. § 608(d); Rule 202(b); Palmer v. Barram, 184 F.3d 1373 (Fed. Cir. 1999).

Findings of Fact

The Laredo courthouse is a steel structure with concrete floors poured on metal decking. The exterior of the building is primarily clad with limestone panels. In places, the panels are separated by glazed aluminum curtainwalls which contain and support windows.

The contract mandates that Mitchell provide and install curtainwalls that meet specified standards as to the impact of wind, water, weight, temperature, sound, building movement, and other forces. Mitchell had to submit shop drawings which showed how the curtainwalls would be fabricated and installed, including how the curtainwalls would be attached to other parts of the building structure. In installing the curtainwalls, Mitchell had to "fix connections to building structure as indicated on shop drawings." The fasteners and anchors used in the installation had to be made of materials and have finishes which were compatible with adjoining materials, so they would not corrode or stain those adjoining materials. Neither the contract's specifications nor its drawings show any method of attaching the curtainwalls. The contract requirements regarding curtainwalls follow model specifications drafted by the American Institute of Architects.

HDR Architecture, Inc., designed the courthouse for GSA. A feature of the design is that curtainwall members in different parts of the building have different dimensions. The curtainwalls with which we are principally concerned in this case are designated "D2" and "D2A." Other curtainwalls about which more will be said later were designated "D6." The D2 and D2A curtainwalls have some similarities to the D6 curtainwalls, but being fifty feet (or three stories) tall, they are at least twice as high as the D6 curtainwalls.

Mitchell's curtainwall shop drawings were prepared by its curtainwall supplier, Kawneer Company, Inc. Mitchell forwarded these drawings to HDR for review on August 15, 2001. (HDR had been engaged by GSA to review submittals, as well as to design the building.) The cross-sectional drawings for the D2 and D2A curtainwalls show each of these members as being anchored to steel tubes which protrude through limestone facing. Kawneer included on the drawings a note which states: "Arch.\G.C. note: 2"x steel tube attached to steel column. Steel tube must be able to withstand loads imposed by the system." In this regard, the note reinforced a general note Kawneer applied to all of its drawings: "Please verify structural adequacy of the supportive structure where anchorage is concerned, using loads shown on drawings." The Kawneer engineer who was responsible for the drawings explained at our hearing, "We drew in some steel. That steel needs to be designed and anchored back to the primary structure to become part of the primary structure to allow us to have a structure to anchor to."

The HDR architect who reviewed the shop drawings marked them "Approved as Noted" on September 19, 2001. With particular reference to Kawneer's note on the D2 and D2A cross-sectional drawings, the architect wrote, "Coordinate these details with limestone shop drawings. How will this tube affect the steel column fireproofing?" The architect explained at our hearing that his question about the impact on the steel column fireproofing reflected an understanding that as intended by the Kawneer engineer, the shop drawings anticipated that the steel tubes would be attached to the steel structure of the building.

Nothing further transpired with regard to the D2 and D2A curtainwalls for more than a year. Meanwhile, however, the D6 curtainwalls were the subject of discussion.

Kawneer's shop drawings show the D6 curtainwalls, like the D2 and D2A curtainwalls, being anchored to steel tubes. The D6 drawings contain the same note as the one on the D2 and D2A drawings, "2"x steel tube attached to steel column. Steel tube must be able to withstand loads imposed by the system." The HDR architect who reviewed the drawings commented, as to that note on the D6 drawings, "See [my] note @ [D2/D2A drawings]."

In June 2002, Mitchell sent to HDR a request for information (RFI) regarding the D6 curtainwalls. The RFI stated that Mitchell's subcontractors had investigated whether the D6 curtainwalls could be installed directly onto the limestone panels and determined that the limestone could not support the windows. Mitchell asked, "How can we support these windows?" The architect responded, "Provide [steel] clip angles at each side of the window frames, bolted to the 2nd floor level slab and connected to the aluminum storefront framing." The architect later determined that "the best solution for the mounting of these windows will be to increase the vertical depth of the window jambs by 37 mm [millimeters]. This will require that a notch be cut out at the slab edge, so the vertical window jambs have enough clearance to pass through the floor level." In July, Mitchell presented GSA with two options for following the architect's guidance by refabricating the D6 curtainwalls and anchoring them to the building by steel clips, one at a cost of \$30,565 and the other at a cost of \$40,948. The agency's contracting officer modified the contract in August to compensate Mitchell at the lesser amount for what she believed was refabrication at the direction of HDR. The D6 curtainwalls were installed as proposed in the first option.

Not until late in the fall of 2002, when materials for the D2 and D2A curtainwalls had arrived at the site and the beginning of installation was expected to be a month to a month and a half away, did Mitchell turn its attention to those curtainwalls. At that point, personnel of Win-Con Enterprises, Inc., Mitchell's subcontractor for furnishing and installing the curtainwall system, asked, "Where are [the] steel tubes that we are supposed to attach [the curtainwalls] to?" Mitchell's personnel responded, "[W]hat steel tubes are you talking about? We don't have any steel tubes. . . . [T]he limestone is your substrate. Attach [the curtainwalls] to the limestone."

Win-Con then asked Cutler Gallaway Services, Inc., the engineering firm that designed the anchorage system for Mitchell's limestone subcontractor, S. S. Smith Sons Masonry, Inc., whether the limestone was capable of supporting the D2 and D2A curtainwalls. On December 31, 2002, Cutler Gallaway responded, "[T]he stone anchor system does not anticipate and will not withstand loads imposed by ancillary elements. The window / storefront systems must be supported independent of the stone or stone support and anchorage systems."

At the end of January 2003, Mitchell's project manager for the first time made GSA's on-site project manager (an employee of 3D/International, which GSA had engaged to supervise construction) aware of a problem with the D2 and D2A curtainwalls. Mitchell's project manager said that his firm had determined that these curtainwalls "cannot be attached to the limestone due to the wind load requirements. . . . We have requested Win-Con to

provide an alternate engineered solution for attachment of these storefront section[s] that could be carried back to the steel columns." The GSA on-site project manager asked Mitchell to provide a cost proposal for what he believed to be additional work to that required by the contract. On February 13, Mitchell requested \$70,898.06 to attach steel clips (not tubes) to the steel structure of the building to serve as points of attachment for the curtainwalls.¹ The work would involve making cutouts in the limestone and routing the steel clips through them. In addition, where a steel column did not adjoin the limestone, Mitchell would install an additional such column inside the limestone so as to establish a structure to which the clips could be attached.

Representatives of 3D/International, HDR, and GSA reviewed this proposal. They concluded that although the new method for anchoring the curtainwalls to the building was acceptable (providing that all contract requirements, including that the curtainwalls would withstand all specified forces, were met), Mitchell should not be compensated for using this method. As the 3D/International representative told Mitchell on February 18, the Government's advisers believed that the contract made Mitchell responsible for anchoring the curtainwall to the building, and because the Government had made no change in any requirement relevant to this mandate, no additional payment was justified.

On March 20, 2003, Mitchell submitted to the GSA contracting officer a claim for payment for the allegedly additional work, in the amount of \$59,625.56. The contracting officer denied the claim by decision dated April 17, 2003. Mitchell appealed her decision on May 2, 2003. In its notice of appeal, the contractor reduced the amount of its claim to \$40,301.28 by deleting all requests for an extension of time in which to perform the contract, including costs of extended overhead.

Discussion

The parties' fundamental disagreement concerns the contract's requirement that the glazed aluminum curtainwalls which contained the building's windows be anchored to the building structure. According to Mitchell, the "building structure" is the building substrate adjoining the curtainwalls. This substrate is limestone panels, and the parties agree that if the D2 and D2A curtainwalls were attached to those panels, they would not meet the contract's specifications for withstanding the impact of wind, water, weight, temperature, sound, building movement, and other forces. Thus, Mitchell maintains, the architect's design is defective and GSA must pay the contractor for work it did to overcome the problems the design caused. According to GSA, the "building structure" is structural elements capable of supporting the load imposed by the curtainwalls – the building's steel columns and concrete slabs. GSA contends that whether the limestone panels can support the curtainwalls is of no importance because Mitchell was at all times required to anchor the curtainwalls to the structure itself and therefore should absorb all costs of performing this work.

¹ Most of this cost represented work by subcontractors S. S. Smith and especially Win-Con. Part of it represented extended overhead costs of Mitchell during a period by which the contractor alleged that this work would delay completion of the entire courthouse construction project.

In the Board's judgment, GSA is correct. The contract specifications dealing with curtainwalls must be read as a whole, giving reasonable meaning to and harmonizing all of them. E.g., Twigg Corp. v. General Services Administration, GSBCA 14064, 98-1 BCA ¶ 29,452, at 146,215 (1997); 7 World Trade Co., L.P. v. Securities & Exchange Commission, GSBCA 13284-SEC, 96-1 BCA ¶ 28,240, at 141,006. Even if a building's facing could be construed for some purposes as part of its structure, it cannot be so construed as to these specifications. The curtainwalls must not only be attached to the structure, but also meet standards for withstanding the impact of various forces. If the structure is deemed to be elements capable of supporting the curtainwalls, installed curtainwalls can meet the performance standards imposed by the contract. On the other hand, if the limestone panels are considered part of the structure to which the curtainwalls must be anchored, the curtainwalls cannot by Mitchell's admission meet the performance standards. GSA's reading treats the specifications as a whole and Mitchell's does not. Therefore, the only reasonable understanding of the contract is the one advanced by the Government. Mitchell was obligated by the contract to anchor the curtainwalls in such a way that they would meet prescribed standards for withstanding various impacts. There is no reason for GSA to pay any additional sum in exchange for the contractor performing work it agreed, by virtue of accepting the contract, to perform.

We note that Mitchell's subcontractors seem to have realized long ago that such a conclusion was inevitable. Kawneer showed on its shop drawings, back in August 2001, that the curtainwalls would have to be anchored to steel tubes. Although the shop drawings do not show the tubes as being of a specific size or as being attached to the steel-and-concrete structure of the building, the clear import of the drawings, as understood by both their drafter and their reviewer, was that the general contractor would have to provide tubes of appropriate size and attach them in an appropriate way to the basic structure of the building. When Win-Con arrived on the scene, in late fall, 2002, it demonstrated that it too read the shop drawing in this manner by asking Mitchell, "Where are [the] steel tubes that we are supposed to attach [the curtainwalls] to?" In February 2003, while Mitchell was asking GSA to pay for a modified attachment design, Kawneer was effectively questioning the predicate for the claim. The engineer responsible for the shop drawings wrote regarding attachment of the curtainwalls, "Kawneer brought this issue to everyone's attention two years ago and now it seems that the supports still do not exist. . . . The Kawneer Shop Drawings were approved with the steel tubes detailed. Structural support needs to be supplied either as detailed or with some kind of stud system that can transfer the loads." The theory that the contract requires anchoring of the curtainwalls to the limestone panels, rather than the basic structure of the building, seems to have been developed only after Mitchell realized, prodded by Win-Con's questioning, that it had not installed the support system shown on the shop drawings.

The fact that GSA paid Mitchell an additional sum to refabricate the D6 curtainwalls and anchor them to the building with steel clips does not compel a conclusion that the agency must do the same with regard to the D2 and D2A curtainwalls. The circumstances are different: with regard to the D6 curtainwalls, GSA's architect directed Mitchell to solve a problem in a particular way, but with regard to the D2 and D2A curtainwalls, the agency and its architect left to Mitchell the solution to the problem. Even if the circumstances had been

the same, however, one swallow does not make a summer² – or, to put our conclusion in more legalistic terms, a single instance does not constitute a course of dealing on which a contractor might justifiably rely to its detriment, leading to a conclusion that the Government must make similar payments in future, similar situations. 4J2R1C L.P. v. General Services Administration, GSBCA 15584, 02-1 BCA ¶ 31,742, at 156,820-21; Roger Parris dba Manchester Realty v. General Services Administration, GSBCA 15512, 01-2 BCA ¶ 31,629, at 156,261. Each matter must stand on its own. Whatever the virtue of GSA's decision to pay for allegedly extra work on the D6 curtainwalls, we see no merit to the claim that the agency should have to pay for what is not extra work on the D2 and D2A curtainwalls.

Decision

The appeal is **DENIED**.

STEPHEN M. DANIELS
Board Judge

² This aphorism was first enunciated by Aristotle (Nicomachean Ethics, bk. I, ch. 7), and has also been attributed to John Heywood (Proverbs, pt. II, ch. 5 (1546)); John Northbrooke (Treatise against Dancing (1577)); Miguel de Cervantes Saavedra (Don Quixote, pt. i, ch. 13 (1605)); and Charles Dickens (Martin Chuzzlewit, ch. 43 (1843)). John Bartlett (ed.), Familiar Quotations 78 (16th ed. 1992); Burton Stevenson (ed.), The Home Book of Quotations 1948 (10th ed. 1967).