

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of BALTIMORE WASHINGTON)
SERVICES)
) Docket No. MSBCA 1539
Under DGS Contract No.)
BPB&G 90/013M)

December 12, 1990

Extrinsic Evidence - The Board will not look to extrinsic evidence unless there is a finding of ambiguity in the contract documents.

APPEARANCE FOR APPELLANT: Lawrence S. Lang, Jr.
Owner
Baltimore, MD

APPEARANCE FOR RESPONDENT: Michael P. Kenney
Assistant Attorney General
Baltimore, MD

OPINION BY MR. MALONE

Appellant timely appeals from the Department of General Services (DGS) final decision denying payment for painting the underside of the stairway of a pedway. The opinion is based on the record as neither party requested a hearing.

Findings of Fact

1. On 1/29/90 the parties entered into a contract for eight thousand dollars (\$8,000.00) to "clean and paint the (approximately 8,000 linear feet) the structural steel support of the canopy and handrails on the pedestrian promenade, located at the Baltimore State Office Complex".

2. The contract did not contain a sketch of the area to be painted and there were no written additions or corrections to the bid documents prior to award. There was a pre-bid conference on January 29, 1990 which Appellant did not attend, and there were no written addendum notices to bidders arising out of the pre-bid

conference. DGS alleges that at the pre-bid conference other bidders who did attend were told that the underside of the stairs was included.

3. Appellant was awarded the contract and on April 18, 1990 met with DGS officials to walk over the project. At this meeting, Mr. Ray Simms, the Maintenance Supervisor for this contract, it is alleged informed Appellant that the stairway was included in the contract and Appellant was to clean and paint the underside of the stairway.

Appellant alleges that the cleaning and painting of the steel columns and the underside of the stairs was not a part of the contract and demanded \$2,000.00¹ for this extra work. DGS denied payment.

Decision

The bid documents are required to be of sufficient clarity as to inform a reasonable contractor of the scope of the work. Granite Construction, 1 MSBCA § 66 (1983).

The bid documents are void of the word stairway and therefore, the Board finds there is an absence of language in the scope of work to place the contractor on notice that the stairway was included.

The Board finds DGS is unable to rely on their position that the underside of the stairway was included, because other bids possibly incorporated this task.

¹Quantum is stipulated to by the parties.

Furthermore, the Board is not persuaded by the DGS argument as to the use of extrinsic evidence in this case. The Board has consistently ruled that extrinsic evidence can only be used after a finding of some form of ambiguity.

This rule of construction has not, however, been given the breath of articulation in many opinions in which it was the predicate. For instance, in Colt Insulation, Inc., MSBCA 1426 & 1447, 3 MSBCA ¶ 231 (1989) the application of the use of extrinsic evidence is cryptically stated in footnote 3 on page 10. This rule is fundamental in Board cases since the assumption is the bid documents and contract language are clear and must stand on their own "four corners" unless some exception applies allowing the Board to go beyond the contract documents.

Again, in Intercounty Construction Corporation, MSBCA 1036 2 MSBCA § 164 (1987) Appellant requested the Board to rely on "contemporaneous action of the parties" in light of ambiguity. However, since there was no finding of ambiguity, the Board would not look at acts of the parties and confined itself to the contract language.

In addition, there is no duty on a contractor to attend pre-bid conferences² nor can a contractor be bound to perform based upon statements made at a pre-bid conference to which the Appellant has no actual knowledge and where the description of work is unambiguous. Consideration of extrinsic evidence such as other bids can only be allowed where the bid documents are determined to be

²COMAR 21.05.02.07. Attendance at a pre-bid conference may not be made mandatory.

ambiguous. This is clearly not the case before this Board. Therefore the Board need not consider what other contractors bid on this project since no ambiguity has been found in this contract.

The instruction to Appellant in April of 1990 to paint and clean the underside of the stairway took place four (4) months subsequent to the contract award. This DGS instruction would be a contract modification allowed by section II par. 5. of the contract. The additional work was not a significant change in the scope of the Contract and was agreed to by both parties in April of 1990. therefore the Board sustains the appeal in the amount stipulated to by the parties.