

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
CASE NO. 1994-10

In re:)
)
Protest of Ruscon Construction Co.,) **ORDER**
Inc. for Triad Mechanical Contractors;)
Appeal by Ruscon Construction Co.,)
Inc. for Triad Mechanical Contractors.)

This case came before the South Carolina Procurement Review Panel (Panel) for hearing on August 31, 1994, on the appeal of Ruscon Construction Co., Inc. for one of its subcontractors, Triad Mechanical Contractors of a decision by the Chief Procurement Officer (CPO) denying Triad's request for a change order to the construction contract.

Present and participating in the hearing before the Panel were Ruscon Construction Co., Inc. represented by Hank Kemp, Project Manager; Triad Mechanical Contractors represented by Del Laquiere, President; Department of Disabilities and Special Needs represented by James Hill, Esquire; and Office of General Services represented by Delbert Singleton, Esquire.

FINDINGS OF FACT

The S. C. Department of Disabilities and Special Needs (DDSN) contracted for the construction of the Coastal Center "F" cottages Renovation project, which involves the renovation of nine residential cottages. The project contractor is Ruscon Construction Co., Inc. (Ruscon). Ruscon's mechanical subcontractor is Triad Mechanical Contractors (Triad). DDSN's architect for the project is Goff D'Antonio Associates, Ltd. (Architect). Buford Goff & Associates, Inc. (Consultant) is the mechanical consultant for the project.

Ruscon aptly states in its protest letter that the "dispute centers on the control valves for the chilled water piping going to the fan coil units and whether

new valves were required by the contract documents." (Record p. 17). The control valves modulate the flow of water through the fan coil units. Specification section 15800 of the contract documents, at subsection 2.02 titled Fan Coil Units, under (F)(2) states "provide 2 way electric control valve with shut-off valves in supply and return chill and hot water piping, balance valve in bypass and calibrated balance valve in return." (Record p. 439). Specification section 15950 at subsection 2.05 titled Water Control Valves, under (B)(1) states "all control valves shall be fully proportioning, single seated, with modulating plug or V-port inner guides and equal percentage flow characteristics, unless otherwise specified." (Record p. 469).

Schematic drawings show the work to be done with the fan coil units and related parts. Drawing DM-1 has demolition notes and note D-1 states "remove fan coil unit with supply & return ductwork, electrical heater controls, thermostat and all accessories; disconnect chilled water pipes." (Record p. 31B). Drawing M-1 note seven (7) states "reconnect existing chill water pipes to new fan coil units", and note eight (8) states "connect new fan coil units FC-7, FC-8, and AHU-1 to existing chilled water mains". Also, Drawing M-1 contains a notation next to the drawing of a fan coil unit stating "new chill water pipes (typical)". (Record p. 31A). Three fan coil units were to be relocated, and Triad included new control valves for the relocated fan coil units in its bid. Triad testified that it did not include new control valves for the remaining fan coil units in its bid. The nine cottages each contain five control valves related to the fan coil units, for a total of forty (40) control valves.

Ron Runyon (Runyon), a partner in Triad, testified that he does the estimating and he prepared Triad's bid for this project. In preparing Triad's bid, Runyon found some of the drawings to be ambiguous. He called Bufford Goff & Associates, the mechanical consultant, and spoke with Eugene Livchin (Livchin).

Livchin designed the heating and air system under the supervision of Dan Reider, P.E. (Reider). Runyon testified that he asked Livchin for a clarification as to what exactly was to be done with the fan coil units that were not being relocated and asked for the issuance of an addendum with the clarification. Runyon further testified that Livchin did not advise him as to what to do in regard to the valves, but simply informed him it was not a chilled water project. Livchin testified that Runyon simply asked about gages and thermostats, and he directed him to the applicable notes. Livchin further testified that the specifications do not call for re-use of valves and he did not recall discussing reuse of the existing valves.

An addendum was not issued concerning the fan coil units with related parts, and Triad did not follow up its verbal request for clarification with a written request. Runyon testified that he did not try to get a clarification after Addendum #2 was issued without the information he requested, but instead chose to use his own interpretation of the documents and the conversation with Livchin. Runyon also testified there was some confusion between the drawings and the specifications, as to what was required, and he considered the drawings to be the controlling documents. Triad interpreted the contract documents to require new valves only for the three fan coil units being relocated, while the existing valves could be re-used on the remaining fan coil units. Triad did not include in its bid new two way control valves for the fan coil units that were not being relocated. Triad inferred, from the contract documents and conversation with Livchin, that Triad was only required to reconnect existing chill water control valves at the fan coil units.

Runyon further testified that Triad used its subcontractor's cost estimate in Triad's bid. An equipment schedule from Triad's subcontractor, submitted to Buford Goff & Associates, dated April 22, 1994 by Ron Runyon, and signed by

Hank Kemp on April 27, 1994, indicate the use of forty (40) hot water and forty (40) chill water valves.

Del Laquiere (Laquiere), a partner of Triad, testified that he handles the project management after the bid is submitted. After beginning work on the project, Laquiere testified that he found that the existing control valves which Triad intended to reuse, are three-way valves that are not proportioning. In May, 1994, Triad proposed a change order for the new control valves and related piping for an estimated total of \$13,770.00, and Ruscon requested a change order for \$15,058.00, reflecting Ruscon's markup on Triad's estimated cost. The architect rejected the request for a change order and instructed Triad to install the new valves. A March 25, 1994 letter from the architect to Ruscon, concerning a control valve change order request, also denies the request and instructs Ruscon to direct the subcontractor (Triad) to install the new control valves. (Record p. 30). Triad through the contractor, Ruscon, protested the architect's decision to the State Engineer, the Chief Procurement Officer for construction. Based on figures after installation, Triad revised its change order request in August, 1994, to a total cost of \$18,658.00, which is now the figure Triad is requesting.

Reider, a professional engineer with the mechanical consultant Buford Goff & Associates, Inc., had design responsibility for the project. Reider testified that he rejected Triad's control valve change order request because the valves are required under the original contract documents. Reider points out that the specifications do not differentiate between the valves to be relocated and the remaining valves, so all of the valves are required to be new two way valves. Reider further testified that the drawings also indicate new two way valves, with no indication of selecting just the relocated fan coil units, so are applicable to all

fan coil units. Mr. Reider also testified that the contract documents do not say that the existing valves are to be reused.

CONCLUSIONS OF LAW

Ruscon and Triad appeal under S. C. Code Section 11-35-4230, which provides for resolution of contract controversies. The subcontractor, through the contractor, protests the decision of the CPO that the contract documents require installation of new two-way proportioning control valves and associated piping for the fan coil units, and no additional money is owed by DDSN. Triad argues that the contract documents do not specify new valves, so Triad did not include the cost of new valves in its bid, and therefore, the valves and piping are an addition to the contract and should be handled through a change order.

In the Project Manual, Specification section 15800 at 2.02 (F)(2), which states "provide 2 way electric control valve with shut-off valves in supply and return chill and hot water piping, balance valve in bypass and calibrated balance valve in return", does not distinguish between fan coil units that are being relocated and fan coil units that are remaining in place. (Record p. 439). The Panel is not convinced by Triad's argument that the specification applies only to the relocated fan coil units. Subsection 2.02 is titled "Fan Coil Units", and does not contain language limiting the reference to fan coil units to the units being relocated and not the remaining fan coil units. If Triad found this specification ambiguous, as to its application to all fan coil units or just relocated fan coil units, Triad should have sought written clarification of the specification. Triad did not present convincing evidence that the specification is applicable only to the relocated fan coil units. On the face of the document, the specification requires all new two-way control valves and associated piping, and the Panel so finds.

Triad testified that the contract documents were not clear, and therefore Triad verbally asked the system designer from the mechanical consultant's office for clarification. Triad admits that it did not receive clarification and did not follow up its verbal request for clarification. Instead, Triad relied on its own inferences from the documents to bid on the project. There is some question as to exactly what Triad asked the consultant's office to clarify and Triad admitted it did not receive clarification, so Triad certainly can not now claim it somehow relied on its conversation with the consultant's office.

Furthermore, Triad's conversation with the consultant's office can not change the meaning of the contract documents. Article 3, section 3.2.3 of the Instructions To Bidders provides that "interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them." So, even if Livchin clarified the questions raised by Runyon, Triad can not rely on a verbal statement, but must seek clarification in writing and an Addendum must be issued. Otherwise an unfair advantage is given to the one seeking and receiving clarifications. Triad did not receive a clarification from Livchin. Triad should have put the specific clarification it was seeking in writing and asked for the issuance of an addendum. Triad should not have proceeded to bid on the project based on its own assumption. The Panel finds that Triad did not properly request a clarification in writing, nor did it properly rely on a clarification through an addendum.

The Panel takes this opportunity to caution project architects, engineers, consultants or others similarly involved in a project to carefully consider the questions brought up by contractors or subcontractors, in an attempt to clarify any ambiguities or incorrect interpretations during the bid process. The Panel

realizes that often time frames are short during the bid process, but would point out that prevention during the early stages of the process can often avoid lengthy and costly delays.

In the Project Manual, Specification section 15950 at subsection 2.05 (B)(1) states "all control valves shall be fully proportioning, single seated, with modulating plug or V-port inner guides and equal percentage flow characteristics, unless otherwise specified." (Record p. 469). On its face, this specification requires all control valves to be fully proportioning. Triad did not present convincing evidence that the specification does not apply to the control valves associated with the fan coil units. Therefore, the existing control valves, which are not proportioning, do not meet the contract specifications and cannot be reused.

Triad admits that prior to bidding, it did not inspect the site or drawings of the existing system to obtain information about the type of valve it intended to reuse. When Triad submitted its bid, it did not know if the existing valves met the specifications. Triad assumed that the existing valves would meet the specifications and could be reused. Triad must now live with that incorrect assumption.

The Panel finds that the specifications indicate that new two-way proportioning control valves and associated piping are required for the fan coil units. Triad argues that the drawings, when read in conjunction with the specifications, alter the meaning of the specifications. Drawings of a project are not meant to alter the requirements of the specifications, but are provided to enhance the understanding of the specifications. Section 1.2.3 of the Supplementary Conditions provides that "the following principles shall govern the settlement of disputes which may arise over discrepancies in the contract documents: ...(c) as between drawings and specifications, requirements of the

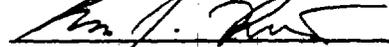
specifications shall govern." (Record p. 57). Runyon indicated that he considered the drawings as controlling if any discrepancies between them and the specifications, because they are usually more detailed. Triad relied on its interpretation the drawings, which caused it to also misinterpret the specifications to require only new valves for the relocated fan coil units.

Even upon inspection of the contract drawings, the Panel must agree with Reider's testimony that the drawings indicate new two way valves. The questioned notes and notations on the drawings do not distinguish between the relocated fan coil units and the remaining fan coil units, so the notes in question are applicable to all fan coil units. The Panel also agrees with Reider that the contract documents do not say that the existing valves are to be reused. In fact, Drawing DM-1 has demolition notes and note D-1 states "remove fan coil unit with supply & return ductwork, electrical heater controls, thermostat and all accessories, disconnect chilled water pipes", which indicates all existing fan coil units and all accessories must be removed. In any event, the specifications are controlling, and clearly require new two way controls for all of the fan coil units.

For the foregoing reasons, the Panel finds that the drawings and specifications of the contract documents include new two-way control valves and associated piping for the fan coil units, and therefore, the S. C. Department of Disabilities and Special Needs does not owe additional money for these. The Panel upholds the decision of the CPO, as far as it is consistent with this opinion, and denies the protest of Triad.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL



Gus J. Roberts, Chairman

Columbia, S. C.
Sept 30, 1994.