

Docket Number: 3699

BRYAN MECHANICAL, INC.

Richard G. Kotarba, Esquire
Chad I. Michaelson, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES

~~Trent Hargrove, Chief Counsel~~
~~Elizabeth O'Reilly, Assistant Counsel~~
Michael C. Barrett, Senior Counsel

March 12, 2004

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$385,362.00.

March 17, 2004

Board issued Acknowledgment letter and forwarded a copy of Claim to Attorney General.

March 23, 2004

Chief Deputy Attorney General filed Acknowledgement Form of Claim. Receipt of same acknowledged March 18, 2004.

April 8, 2004

Defendant filed Preliminary Objections to Plaintiff's Claim as well as Brief in Support of Preliminary Objections.

May 3, 2004

Plaintiff filed Response to Preliminary Objections as well as Brief in Opposition.

June 9, 2004

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 9th day of June, 2004, after review of Defendant's Preliminary Objections and Plaintiff's Response thereto, it is hereby **ORDERED** and **DECREED** that said Preliminary Objections are **DENIED**. Defendant is to file an Answer within thirty (30) days of the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

June 17, 2004

Plaintiff filed Acceptance of Service of Opinion and Order dated June 9, 2004. Receipt of same acknowledged June 14, 2004.

July 7, 2004

Defendant filed Answer and New Matter.

July 8, 2004

Defendant filed Commonwealth's Application to Amend Order to Include Statement Specified in 42 Pa. C.S. §702(b) and Brief in Support thereof.

July 12, 2004

Defendant filed Acceptance of Service of Opinion and Order dated June 9, 2004. Receipt of same acknowledged June 10, 2004.

July 27, 2004

Plaintiff filed Reply to New Matter.

November 8, 2004

Defendant filed Consent to Amendment of Statement of Claim.

November 8, 2004

Plaintiff filed Amended Claim and proof of mailing. Amount: (Unchanged).

November 9, 2004

Board issued Acknowledgment letter and forwarded copy of Amended Claim to Attorney General.

December 8, 2004

Defendant filed Answer and New Matter to Plaintiff's Amended Complaint.

January 5, 2005

Plaintiff filed Reply to Defendant's New Matter to Plaintiff's Amended Complaint.

January 31, 2005

Defendant filed Praecipe to withdraw appearance of Elizabeth O'Reilly, Assistant Counsel and enter appearance of Michael C. Barrett, Senior Counsel, on behalf of Defendant.

February 2, 2006

Board issued letter to parties requesting a status report.

February 28, 2006

Plaintiff filed letter (via facsimile) requesting a Hearing be scheduled.

March 1, 2006

Board forwarded letter to parties requesting scheduling information.

March 2, 2006

Plaintiff filed letter (via U.S. Mail) requesting a Hearing be scheduled.

March 2, 2006

Defendant filed letter (via facsimile) advising that parties have not completed discovery in this case.

March 13, 2006

Plaintiff filed letter addressed to Defendant regarding Defendant's request for additional discovery.

March 15, 2006

Board forwarded second letter to parties requesting scheduling information.

March 16, 2006

Plaintiff filed Proposed Scheduling Order.

March 20, 2006

Plaintiff filed Proposed Scheduling Order.

March 31, 2006

Plaintiff filed (via facsimile) Amended Scheduling Order.

April 3, 2006

Plaintiff filed (via U.S. Mail) Amended Scheduling Order.

April 4, 2006

Defendant filed Proposed Scheduling Order.

April 10, 2006

Board rendered Scheduling Order. Order as follows: "AND NOW, this 10th day of April, 2006, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant is May 1, 2006; 2. The last day for defendant's expert report, if any, to be provided to plaintiff is June 1, 2006; 3. All discovery, including exchange of expert rebuttal reports shall be completed by June 20, 2006*; 4. The last day for filing pre-trial motions is June 30, 2006*; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than August 1, 2006 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Thursday, August 10, 2006, at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; and 7. This matter is set for hearing beginning on October 23, 2006 and running through October 25, 2006, as necessary. Said hearing shall be held at the Saint Joseph's Center, 2900 Seminary Drive, Greensburg, PA commencing at 9:30 a.m." Copy forwarded to Plaintiff and Defendant.

April 11, 2006

Defendant filed Notice of Service of Respondent's Responses to Claimant's Second Request for Production of Documents.

April 19, 2006

Plaintiff filed Acceptance of Service of Scheduling Order dated April 10, 2006. Receipt of same acknowledged April 14, 2006.

July 31, 2006

Plaintiff filed letter (via facsimile) requesting an extension of time until August 4, 2006 in which to file Pre-trial statements.

July 31, 2006

Board issued letter to Plaintiff, with copy to Defendant granting extension of time for Plaintiff to file Pre-trial statements.

August 4, 2006

Plaintiff filed Pre-trial statements.

August 4, 2006

Defendant filed Pre-trial statements.

August 7, 2006

Board forwarded letter to parties rescheduling pre-trial conference on August 10, 2006, from 1:00 p.m. to 11:00 a.m.

August 9, 2006

Plaintiff filed letter (via facsimile) confirming that they will be attending the pre-trial conference by telephone scheduled for August 10, 2006, at 11:00 a.m.

August 10, 2006

Pre-trial conference held at 200 North Third Street, Suite 600, Harrisburg, Pennsylvania commencing at 11:00 a.m.

August 10, 2006

Defendant filed resume (via facsimile) of John H. McTyre.

August 10, 2006

Defendant filed resume (via facsimile) of JoAnn Coleman.

August 11, 2006

Plaintiff filed letter (via U.S. mail) confirming that they will be attending the pre-trial conference by telephone scheduled for August 10, 2006, at 11:00 a.m.

August 14, 2006

Board rendered an Order. Order as follows: "**AND NOW** this 14th day of August, 2006, having considered the pre-trial memoranda of both Bryan Mechanical, Inc. and Commonwealth of Pennsylvania, Department of General Services and having conducted a pre-hearing conference at which counsel for both parties expressed agreement, it is hereby Ordered that, pursuant to the stipulation of the parties, the following facts are entered into the record of this matter: 1. Claimant Bryan Mechanical, Inc. is a Pennsylvania Corporation with offices in Allegheny County, Pennsylvania. Bryan Mechanical, Inc. is a contracting company primarily engaged in the business of constructing mechanical and plumbing systems. 2. The Commonwealth of Pennsylvania, Department of General Services (hereinafter "Department") is a Commonwealth agency with a contract mailing address of 18th and Herr Streets, Harrisburg, Pennsylvania 17125. 3. On or about January 25, 2002, Bryan Mechanical, Inc. and the Department entered into Contract No. DGS 800-235.33, Phase 2 (hereinafter the "Contract") relating to certain construction work on the Chemistry Building on the University Park campus of the Pennsylvania State University in Centre County, Pennsylvania (hereinafter "Project"). 4. During the course of the Project, the Department requested that Bryan Mechanical, Inc. perform additional and extra work, and provide additional and extra material, that was not included within the original scope of work under the Contract.

Bryan Mechanical, Inc. completed this additional and extra work in a workmanlike fashion and in accordance with generally-accepted standards in the construction industry, and the work was accepted by the Department. 5. The Department issued change orders reflecting this additional and extra work, including Change Order Nos. 18 through 22 by which the Department acknowledged that Bryan Mechanical, Inc. was entitled to, at minimum, an additional \$273,882.79 in compensation. 6. Change Order Nos. 18-22, as originally submitted by Bryan Mechanical, Inc., requested additional compensation in the amount of \$364,911.21, allocated as follows: Change Order No. 18 - Amount \$98,640.71, Change Order No. 19 - Amount \$68,325.26, Change Order No. 20 - Amount \$82,700.95, Change Order No. 21 - Amount \$47,264.18, Change Order No. 22 - Amount \$67,980.11 = Total \$364,911.21. 7. The difference between the amount requested by Bryan Mechanical, Inc. in Change Order Nos. 18-22 and the amount recognized by the Department is \$91,028.42. 8. On or about March 8, 2002, Bryan Mechanical, Inc. issued Request for Information ("RFI") No. 28 to the Project Architect inquiring whether laboratory vent piping was required in the basement or the first through fourth floors of the building. 9. That same day, the Project Architect responded by referring Bryan Mechanical, Inc. to

drawing P5.11, the sanitary waste riser diagram, which showed connections at the riser for laboratory vent piping in the basement and on the first through fourth floors of the building. 10. On or about May 28, 2002, Bryan Mechanical, Inc. issued RFI No. 97 to the Project Architect inquiring whether certain sanitary vent piping was required in the basement of the building. 11. On June 14, 2002, the Project Architect responded by again referring Bryan Mechanical, Inc. to drawing P5.11, which showed a connection at the riser for sanitary vent piping in the basement of the building. 12. On March 17, 2003, Bryan Mechanical, Inc. submitted a Request for Change Order for the laboratory vent piping work reflected in the Project Architect's response to RFI No. 28. 13. On March 26, 2003, Bryan Mechanical, Inc. submitted a Request for Change Order for the sanitary vent piping work reflected in the Project Architect's response to RFI No. 97. 14. On June 11, 2003, the Project Architect denied both change order requests, taking the position that the work was reflected in the contract documents. 15. Bryan Mechanical, Inc. has exhausted its administrative remedies with respect to its claims for additional compensation for the work reflected in Change Order Nos. 18 through 22 and in the Project Architect's response to RFI Nos. 28 and 97." Copy forwarded to Plaintiff and Defendant.

August 21, 2006

Plaintiff filed Acceptance of Service of Order dated August 14, 2006. Receipt of same acknowledged August 17, 2006.

August 18, 2006

Defendant filed Acceptance of Service of Order dated August 14, 2006. Receipt of same acknowledged August 17, 2006.

October 23, 2006

Panel hearing held at the Saint Joseph's Center, 2900 Seminary Drive, Greensburg, PA commencing at 9:30 a.m.

October 25, 2006

Panel hearing held at the Saint Joseph's Center, 2900 Seminary Drive, Greensburg, PA commencing at 9:30 a.m. Case completed.

November 14, 2006

Plaintiff filed letter (via facsimile) requesting that the submission of post-hearing briefs be continued until December 14, 2006.

November 15, 2006

Board forwarded letter to parties granting extension.

November 16, 2006

Testimony of Panel Hearing held October 23 & 25, 2006 filed.

November 17, 2006

Board forwarded copy of testimony of Panel Hearing held October 23 & 25, 2006 to Defendant. Last day of Testimony.

November 15, 2006

Plaintiff filed letter (via U.S. Mail) requesting that the submission of post-hearing briefs be continued until December 14, 2006.

November 21, 2006

Defendant filed Acceptance of Service of Testimony dated November 16, 2006. Receipt of same acknowledged November 17, 2006.

December 21, 2006

Plaintiff filed letter (via facsimile) requesting an extension of time until January 8, 2007 to file Findings of Fact, Conclusions of Law and Legal Brief in Support.

December 26, 2006

Plaintiff filed letter (via U.S. Mail) requesting an extension of time until January 8, 2007 to file Findings of Fact, Conclusions of Law and Legal Brief in Support.

January 8, 2007

Plaintiff filed Findings of Fact, Conclusions of Law and Legal Brief in Support.

February 6, 2007

Defendant filed letter (via facsimile) requesting an extension of time until February 14, 2007 to file Findings of Fact, Conclusions of Law and Brief.

February 15, 2007

Defendant filed Findings of Fact, Conclusions of Law and Legal Brief in Support.

February 20, 2007

Board forwarded letter to Panel members requesting panel report.

March 6, 2007

Plaintiff filed Response to Post-Trial Brief.

April 6, 2007

Panel Report submitted.

April 24, 2007

Plaintiff filed letter advising that the recent Pittsburgh Building case in Commonwealth Court impacts this case.

October 25, 2007

Board rendered Opinion and Order. Order as follows: **"AND NOW,** this 25th day of October, 2007, it is hereby **ORDERED** and **DECREED** that final judgment be rendered in favor of the Plaintiff, Bryan Mechanical, Inc. ("BMI"), and against Defendant, Department of General Services ("DGS"), for the claim for additional compensation for work reflected in Change Order Nos. 18 to 22, in the amount of \$109,330.71. This sum consists of \$89,058.21 in costs withheld by DGS and \$20,272.50 in prejudgment interest. BMI is also awarded post-judgment interest on the outstanding judgment at the statutory rate for judgments (6% per annum) beginning on the date of this

Order and continuing until the judgment is paid in full. In addition, BMI is hereby awarded reasonable attorney's fees and costs respecting its claim made on Change Order Nos. 18-22, the dollar amounts of which shall be determined as set forth in this Opinion. BMI's claim respecting additional compensation for its LV/SV piping work is **DENIED**, with each party to bear its own costs on this portion of the claim." Copies forwarded to Plaintiff, Defendant and Chief Deputy Attorney General.

October 29, 2007

Defendant filed Acceptance of Service of Opinion and Order dated October 25, 2007. Receipt of same acknowledged October 26, 2007.

November 5, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated October 25, 2007. Receipt of same acknowledged October 29, 2007.

November 5, 2007

Attorney General filed Acceptance of Service of Opinion and Order dated October 25, 2007. Receipt of same acknowledged October 30, 2007.

November 13, 2007

Plaintiff transmitted letter requesting a ten extension of time in which to submit an itemized listing of the fees and costs to which BMI believes it is entitled under the Board's Opinion and Order of October 25, 2007.

November 13, 2007

Board forwarded letter to parties granting extension of time.

November 14, 2007

Plaintiff filed letter requesting a ten day extension of time in which to submit an itemized listing of the fees and costs to which BMI believes it is entitled under the Board's Opinion and Order of October 25, 2007.

November 26, 2007

Plaintiff filed copy of Petition for Review as filed in Commonwealth Court.

November 26, 2007

Plaintiff transmitted Stipulation Regarding Attorneys' Fees and Costs.

November 27, 2007

Defendant filed copy of Cross Petition for Review as filed in Commonwealth Court.

November 27, 2007

Plaintiff filed Stipulation Regarding Attorneys' Fees and Costs.

November 28, 2007

Board forwarded letter to parties advising that if the Board's ruling on entitlement issued in our Order of October 25, 2007 is upheld, the Board will defer further action in this case.

November 28, 2007

Commonwealth Court issued Petition for Review (No._2159 C.D. 2007)

November 28, 2007

Commonwealth Court issued Corrected Petition for Review (No._2159 C.D. 2007)

November 28, 2007

Commonwealth Court issued Petition for Review (No._2155 C.D. 2007)

December 3, 2007

Plaintiff filed an original signature page to the previously-filed Stipulation Regarding Attorneys' Fees and Costs, which has been executed by counsel for Defendant.

December 10, 2007

Defendant filed Petitioner's Docketing Statement as filed in Commonwealth Court.

December 14, 2007

Plaintiff filed Petitioner's Docketing Statement as filed in Commonwealth Court.

December 19, 2007

Plaintiff filed Application for Extension of Time as filed in Commonwealth Court.

May 23, 2008

Commonwealth Court issued Opinion and Order. Order as follows: "And Now, this 22nd day of May 2008, the October 25, 2007 order of the Board of Claims entered in the above captioned matter is AFFIRMED."

July 14, 2008

Commonwealth Court issued Order. Order as follows: "NOW, July 11, 2008, having considered the Department of General Services' application for reargument, and Bryan Mechanical's answer, the application is denied."

January 22, 2009

Plaintiff filed Praecipe to Mark Settle and Discontinued and Ended.

January 27, 2009

Board rendered Praecipe Order. Order as follows: "**AND NOW**, this 27th day of January, 2009, upon receipt of a praecipe, executed by Chad I. Michaelson, Esquire, on behalf of Plaintiff, Bryan Mechanical, Inc., requesting that the Board mark the above-captioned matter settled, discontinued and ended, docketed with this Board under date of January 22, 2009, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice."

February 2, 2009

Plaintiff filed Acceptance of Service of Order dated January 27, 2009. Receipt of same acknowledged January 29, 2009.
