UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: July 7, 2021

CBCA 7039

HAMILTON PACIFIC CHAMBERLAIN,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

P. Sean Milani-nia and Rachel M. Severance of Fox Rothschild LLP, Washington, DC, counsel for Appellant.

Nathan Menard, Office of General Counsel, Department of Veterans Affairs, Washington, DC, counsel for Respondent.

CHADWICK, Board Judge.

The Board handled this appeal under the small claims procedure of Board Rule 52 (48 CFR 6101.52 (2020)). The parties submitted the case on the record under Rule 19 and filed two rounds of briefs. This "decision is final and conclusive, shall not be set aside except for fraud, and is not precedential." Rule 52(c); *see* 41 U.S.C. § 7106(b)(4), (5) (2018).

"Because we write for the parties, we include only minimal background for context." *Diamond v. Shulkin*, 692 Fed. App'x 637, 637 (Fed. Cir. 2017); *see* Rule 52(c) ("The presiding judge may issue a decision in summary form."). The contractor's October 2020 administrative claim alleged that the contracting officer's direction to demolish and rebuild a concrete pad for an exterior storage building was a constructive change that cost $41,809.87 to perform. The contractor (HPC) appealed a deemed denial of the claim and elected the small claims procedure without objection by the agency (VA).

HPC originally poured the pad sloped from an elevation of 98.65 feet at the internal edge of the pad down to 98.50 feet at the landscape side. HPC argues that "the civil drawings provided detailed elevations for the Storage Pad" and depicted the slope, whereas "the architectural drawings only provide[d] the overall storage building elevation." VA responds that "at least six" architectural and structural "drawings clearly show that the concrete slab was to be constructed at a flat grade" and that HPC misreads civil drawing C2.02, on which HPC relies. (VA admits, however, that after the dispute about the slope arose, VA agreed to have HPC rebuild the pad sloping inward *toward* the adjacent building.)

The dispute centers on the parties' interpretations of the two spot elevations of 98.50 feet shown in civil drawing C2.02 in crosshair symbols next to, but slightly outside of, the outside corners of the pad. VA argues that those spot elevations show the landscape grade next to the pad, where the crosshairs aim. Alternatively, VA argues that the elevations were at least ambiguous, such that HPC should have sought clarification before proceeding. HPC responds that its "interpretation of C2.02" as depicting a sloped pad "is the only reasonable interpretation" and that "VA's contention that the back wall of the storage structure is the only structural element in the entire drawing without proposed spot elevations and simultaneously is the only location in any contract drawing with proposed spot elevations in the landscape, does not withstand scrutiny." HPC argues that the positioning of the crosshairs slightly in the landscape is an obvious computer-aided drawing glitch.

We read the civil drawing as HPC does. Contract documents can be clear even if parsing them requires close attention. *E.g.*, *Bank of America, National Ass'n v. Department of Housing & Urban Development*, CBCA 5571, 18-1 BCA ¶ 36,927 (2017) (citing *McCann v. McGlynn Lumber Co.*, 34 S.E.2d 839, 845 (Ga. 1945)). The decisive consideration here is that proposed spot elevations are shown in the "C2" grading drawings either at or near structural edges or on top of ground contour lines; we see no indicia that a spot elevation for construction would sit alone in the landscape unconnected to another drawing element. To the contrary, when we asked for examples of proposed spot elevations used in combination with contour lines to show landscape grading, VA cited only examples where the crosshairs aim directly at contour lines. The crosshairs are supposed to aim at a line. In most instances, they do. Where they do not, they almost do. The natural interpretation of the spot elevations next to the outer corners of the pad in drawing C2.02 is as elevations of the adjacent drawing element, the pad. Otherwise, as HPC notes, this area of the drawing would be the only area where structural corners had no spot elevations and proposed spot elevations had no referent lines. The slight misalignment of the crosshairs with the pad border does not change the function of the crosshair symbol in the drawing.

VA argues that applying HPC's interpretation of spot elevations adjacent to, but not directly on structural edges in drawing C2.02 would dictate an unrealistic slope of a structure

next to the storage pad, the vendor storage room (VSR), at which the inner and outer spot elevations differ by about 8.5 inches. This dispute is not about the VSR, however, and VA cites no record evidence either that the VSR was *not* built with such a slope or that the VSR could not serve its purpose if it was. At worst for HPC, any ambiguity as to the slopes in drawing C2.02 was latent, and we would construe such ambiguity against the agency in the absence of persuasive evidence supporting VA's position, which we do not have. *See HPI/GSA–3C, LLC v. Perry*, 364 F.3d 1327, 1334 (Fed. Cir. 2004).

We lack such evidence because we also agree with HPC that drawing C2.02 does not "conflict with" any of the six drawings cited by VA, so those six other drawings do not support VA's position. Structural drawing SB1.11 provides an elevation for the storage pad "unless otherwise noted" and directs the contractor to coordinate that structural drawing with civil drawings when constructing the pad. This indicates that the elevations in drawing C2.02 are the detailed grade elevations. The five architectural drawings that VA cites are schematics that specify certain elevations as "top" or "01 level." Those drawings do not expressly note by symbol or otherwise whether a particular surface slopes away from a specified elevation (such as the 01 level of the storage building) even where a feature is obviously drawn with a slope. The civil grading drawings, not the architectural drawings, prescribe grading details.

VA challenges the claimed quantum by arguing that "[t]he amount charged by the subcontractor ($36,250) lacks any support." HPC's burden is to prove its own costs, not to prove the subcontractor's costs. *Kellogg, Brown & Root Services, Inc. v. Secretary of the Army*, 973 F.3d 1366, 1370–71 (Fed. Cir. 2020). The subcontractor's fixed-price invoice evidences the actual cost to HPC of replacing the pad. *See Bruce Construction Corp. v. United States*, 324 F.2d 516, 518 (Ct. Cl. 1963). It is a relatively small cost on a multi-million-dollar project, and it appears reasonable in context, as do the markups in the claim.

Because we do not rely on the declarations that HPC attached to its Rule 19 brief, the disagreement about whether HPC should have disclosed that testimony sooner is moot.

Decision

We **GRANT** the appeal. HPC shall recover $41,809.87 with interest under 41 U.S.C. § 7109 running from October 12, 2020 to the payment date.

Kyle Chadwick

KYLE CHADWICK
Board Judge