

PETI

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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-196608

DATE: February 8, 1980

MATTER OF: Ellerbe Associates, Inc.

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DIGEST:

Where questions of fact remain concerning contractor's request for payment for additional work done under fixed price contracts, matter should be considered under disputes procedure provided for by contracts concerned.

The Veterans Administration (VA) requests an advance decision as to whether Ellerbe Associates, Inc. (Ellerbe) may be paid for additional work performed under fixed-price Architect Engineer (A/E) contracts for the redesign of the psychiatric ward and processing and distribution (PAD) sections of the VA Hospital in New Orleans, Louisiana.

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Ellerbe claims that its fee for the renovation of the psychiatric ward was based on a renovation cost estimate previously prepared by VA without a floor plan and that new administrative office space subsequently was added. Ellerbe states that its fee for the renovation of the PAD was based on outdated 1973 drawings furnished by VA. Moreover, Ellerbe argues that the contract price was not firm but was to be adjusted after the preliminary drawings were submitted with an accurate renovation cost estimate. Ellerbe references an oral agreement to this effect on the original contract date between it and the VA.

The VA does not disagree that Ellerbe added new administrative office space to the psychiatric ward. Regarding the PAD renovations, VA states that fire and

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[Request for Additional Payment Under Fixed-Price Contract]

other building code violations in Ellerbe's drawings required major changes which caused an appreciable increase in Ellerbe's costs. However, VA submits that Ellerbe is not entitled to additional compensation because the contract expressly required Ellerbe to comply with the codes and Ellerbe's additional efforts were within the scope of the contracts. In addition, Ellerbe did not obtain, as required by the contract, prior written approval by the contracting officer to perform work which it believed was beyond the scope of the contract.

The questions raised here are normally resolved through the standard disputes clause procedure. Although we have, upon request, advised contracting officers of the law applicable to such matters pending before them, see, e.g., Federal Data Corporation, B-190659, October 23, 1978, 78-2 CPD 380, here we find the record does not sufficiently establish the facts involved to permit us to provide such advice. For example, the record is not clear as to whether the scope of the contract was intended to be defined by the allegedly outdated drawings and cost estimates which the Government furnished to the contractor. Neither is the record clear as to what the contracting officer might have known about what Ellerbe was told regarding the extra work. Accordingly, we believe the matter is not appropriate for consideration by this Office, but should be processed under the disputes procedure provided for by the contracts.



Milton J. Socolar
General Counsel