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Decision No. 77419

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HUB CITY CONSTRUCTION CO.,
a California corporation,

Complainant,

-vs-

PARK WATER COMPANY, INC.

Defendant.

Case No. 9025
(Filed February 17, 1970)

William P. Wilson, for Hub City
Construction Co., complainant.
Chris S. Rellas, for Park Water
Company, defendant.
Jerry J. Levander, for the
Commission staff.

O P I N I O N

Hub City Construction Co. (Hub) complains that defendant Park Water Company (Park) charged excessive costs pursuant to a main extension agreement for the installation of domestic water facilities at Hub's Tract No. 29241 in the City of Bellflower. Hub seeks an adjustment of said costs. Public hearing was held before Examiner Robert Barnett on May 4, 1970 at Los Angeles.

The underlying facts of this case are clear. Hub is a subdivider constructing homes within the certificated area of Park. Prior to entering the main extension agreement in dispute Hub had contracted with Park for Park to install water systems in three or four of Hub's tracts. The main extension agreements for those installations contained provisions for advances to cover the cost of facilities, subject to revision to reflect the actual cost of construction. In all cases the actual cost of construction came within five or ten dollars of the estimated advance.

On or about April 24, 1969 Hub and Park signed a main extension agreement whereby Park agreed to install water facilities in Tract No. 29241 and Hub agreed to advance the amount of \$16,600 to cover the cost of those facilities. The \$16,600 figure was an estimate prepared by Park's general manager in early March. It was based on the premise that all labor would be performed by Park's employees except for some ditching work to be performed by an independent contractor. At about this same time Hub requested an outside contractor, Byron L. Crume, Inc., to bid on the installation of these water facilities. Crume submitted a firm bid, which included the cost of 42 water meters, of \$20,875.65; excluding the 42 water meters the bid was \$19,406.65. (Actually, Hub erroneously considered the bid to be \$16,885.65 without water meters.) Because Park's estimate was lower than Crume's Hub chose to have the water system installed by Park. At the time of the signing of the main extension agreement Hub requested Park to install the water system and asked that construction begin on May 5, 1969. However, two things had happened between the time

Park's estimate of \$16,600 was submitted to Hub and the time Hub signed the main extension agreement and asked that construction begin. Those two things were (1) Park's general manager became ill on March 22, 1969 and was away from his job for a period of months, and (2) by late April 1969 all of Park's employees were engaged in other construction.

At this point the president of Park asked an independent contractor, C & D Pipeline Co., to bid on the construction of Hub's water system. The basis of the bid was that Park would supply materials for the job and C & D would supply labor. On or about May 1, 1969 C & D bid the job at \$13,700. Park did not accept this bid but, nevertheless, C & D began construction on or about May 13, 1969. On or about May 19, 1969 C & D signed a contract for a fee, cost plus ten percent, but not to exceed \$13,700. The job was completed on or about June 12, 1969 and C & D's bill was \$10,323.90. To that bill Park added material cost, payroll labor, and overheads. The total amount of the job billed to Hub was \$22,219.55. Of this amount Hub does not dispute \$16,600 plus \$627.96 for fire hydrant heads. This lawsuit involves the balance of \$4,991.59, primarily the difference between C & D's equipment and labor costs and Park's estimated labor costs, had Park done the job.

Hub contends that a thirty percent overrun is unreasonable and a breach of the main extension agreement. It seeks an adjustment of \$4,991.59 from Park's bill. Park asserts that Hub knew that the sum of \$16,600 required by the main extension agreement was an advance based upon an estimate; that Hub knew that this estimate was to be revised upon completion of the facilities to cover the total cost of construction; and that this revision is required by Park's main extension rule and by Commission order.

The applicable sections of the Main Extension Rule are, Section A. 6e "Any differences between the adjusted construction costs and the amount advanced shall be shown as a revision of the amount of advance and shall be payable within thirty days of date of submission of statement," and Section A. 3c "The 'adjusted construction cost', for the purposes of this rule, shall be reasonable and shall not exceed the costs recorded in conformity with generally accepted water utility accounting practices, and as specifically defined in the Uniform System of Accounts for Water Utilities prescribed by the Commission, of installing facilities of adequate capacity for the service requested...." Commission jurisdiction is provided for by Section A. 8 "In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears unreasonable to either party, the utility, applicant or applicants may refer the matter to the Commission for determination."

In our opinion the cost of installing the facilities in Tract No. 29241 in the amount of \$22,219.55 less the cost of fire hydrant heads in the amount of \$627.96 is unreasonable. We base this finding on the following facts: (1) The cost overrun was approximately thirty percent; (2) an independent contractor made a bona fide bid on this job of \$19,406.65; (3) Park, although knowing that there would be an increase of about \$5,000 over its estimate prior to the beginning of construction, failed to notify Hub of this increase thereby precluding Hub from obtaining a qualified contractor to construct and install the facilities pursuant to Main Extension Rule C. 1c; and (4) Park let the bid on the basis of cost plus ten percent, without the knowledge of Hub, thereby giving its outside contractor, in effect, a blank check.

In our opinion the reasonable cost of constructing the facilities installed in Tract No. 29241 should have been \$19,406.65 plus \$627.96 for fire hydrant heads, making a total of \$20,034.61. The difference between the total billed, \$22,219.55, and the reasonable cost, \$20,034.61, is \$2,184.94. This amount is unreasonable and should not be paid by Hub. Hub should pay to Park the amount of \$3,434.61 to adjust the estimate advanced to reflect the reasonable cost of the installed facilities. Park shall reflect the receipt of the \$3,434.61 by a credit to Account 241 (Advances in Aid of Construction) in the amount of \$3,434.61.

Findings of Fact

1. On or about April 24, 1969 Hub and Park signed a main extension agreement whereby Park agreed to install water facilities in Hub's Tract No. 29241 within the service area of Park and Hub agreed to advance the amount of \$16,600 to cover the estimated cost of those facilities, subject to adjustment to reflect the actual reasonable cost.

2. At about this same time Hub obtained from an independent contractor a firm bid of \$19,406.65 to construct the water facilities in Tract No. 29241.

3. Because Park's estimate was lower than the independent contractor's Hub chose to have the water facilities installed by Park.

4. Park employed C & D to construct the water facilities for a contract price of cost plus ten percent, with Park supplying materials. Park did not ask any other contractor to bid on this job. The water facilities were installed by about June 12, 1969 and C & D's bill was \$10,323.90. To that bill Park added material cost, payroll labor, and overheads. The total amount of the job billed to Hub was \$22,219.55. Of this amount \$627.96 was for fire hydrant heads.

5. Park knew that there would be an increase in cost of construction over its estimate of approximately \$5,000 prior to the beginning of construction but Park did not notify Hub of this increase.

6. The reasonable cost of constructing the water facilities installed in Tract No. 29241 should have been \$19,406.65 plus \$627.96 for fire hydrant heads for a total of \$20,034.61. The difference between the total billed, \$22,219.55, and the reasonable cost, \$20,034.61 is \$2,184.94. This amount is unreasonable and should not be paid by Hub. . .

7. Hub should pay to Park the amount of \$3,434.61 to adjust the estimate advanced to reflect the reasonable cost of the installed facilities.

8. Park should reflect the receipt of the \$3,434.61 by a credit to Account 241 (Advances in Aid of Construction) in the amount of \$3,434.61.

The Commission concludes that Hub shall pay to Park the amount of \$3,434.61 to adjust the estimate advanced to reflect the reasonable cost of the installed facilities.

O R D E R

IT IS ORDERED that:

1. Hub shall pay to Park the amount of \$3,434.61 to adjust the estimate advanced to reflect the reasonable cost of the installed facilities.

2. Park shall reflect the receipt of \$3,434.61 by a credit to Account 241 (Advances in Aid of Construction) in the amount of \$3,434.61.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 30th day of JUNE, 1970.

William Sproull
President
August
J. Stinson
Samson
James L. Stinson
Commissioners