

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
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SUFU Network Services, Inc. ) ASBCA No. 54503  
)  
Under Contract No. F41999-96-D-0057 )

APPEARANCES FOR THE APPELLANT: Frederick W. Claybrook, Jr., Esq.  
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OPINION BY ADMINISTRATIVE JUDGE JAMES  
ON PARTIES' MOTIONS FOR RECONSIDERATION

Respondent and appellant have both timely moved for reconsideration of our decision on 17 August 2004.

I.

Respondent moves for reconsideration of our decision on two grounds. First, it argues that Mod. 5 *did* open calling card access because that was the contracting officer's reasonable understanding of the Mod. Second, it argues that the CO's order requiring SUFI to remove its restrictions on calling card access was not a material breach because it did not substantially diminish SUFI's revenue. (Gov't mot. at 1-2). Respondent also requests "clarification" of the Board's findings 1, 15, 20, 25, 33, 44 and 63 (*id.* at 2-9). The "clarifications" respondent seeks mainly are additional findings that repeat several of the findings respondent proposed in its July 2004 post-hearing brief. Those proposed findings are immaterial or inaccurate.

Respondent avers that the parties "did not agree to cancel DO No. 3 for Aviano" as found in finding 44 (*id.* at 8). Appellant agrees with respondent (app. opp'n at 9-10). The above-quoted assertion is immaterial to the Board's decision and, in any event, the parties by their conduct abandoned DO No. 3.

Respondent offers no credible and persuasive factual bases for changing our finding 48 and our legal conclusion that CO Jones' uncommunicated subjective interpretation of Mod. 5 to open calling card access did not bind SUFI (slip op. at 24), or our finding 63, which compared SUFI's billing revenues in February-April 2000-2003 with those in February-April 2004. Respondent argues that the February through May 2003 billing revenues should be compared to its revenues in the period February-April 2004, citing Mr. Wible's 29 October 2003 seven factors affecting revenue (AR4, tab 161 at 102). To compare billings in a four-month period to those in a three-month period is incongruous. Moreover, Mr. Wible's 29 October 2003 message did not mention any time period for billings comparison to February-April 2004 (*id.*).

We deny respondent's motion for reconsideration.

## II.

SUFI argues that the Board "overlooked the un rebutted evidence" that SUFI communicated to the Air Force its understanding of SOW ¶ 3.11, "that it would receive all new facilities as they became available on bases for which it had a delivery order," prior to contract award (app. mot. at 1). SUFI cites the parties' communications leading to SUFI's version of ¶ 3.11 of the statement of work and Mr. Stephens' testimony in support of its argument. SUFI essentially repeats findings of fact ¶¶ 18-21 proposed in its post-hearing brief, including: "Mr. Stephens testified, un rebutted, that Ms. Guilmenot and Jones had confirmed to him that SUFI would be entitled to receive all new lodging facilities on bases for which SUFI received delivery orders . . . ." (app. br. at ¶ 21).

In drafting the Board opinion, we reviewed the record that SUFI cited to support such statement. We determined that Mr. Stephens' cited testimony did not identify Ms. Guilmenot and Ms. Jones or any other Air Force procurement personnel to whom he communicated his view that SP ¶ 3.11 superseded RFP ¶ 3.11, and did not identify when he made such communication to Air Force personnel (tr. 1/186-94). The testimony SUFI cites is too vague to find that Mr. Stephens told Ms. Guilmenot, Ms. Jones or any other Air Force procurement official *before contract award* that SUFI would receive all new facilities as they became available on bases for which it had a delivery order. Hence, we found that the record does not show "that Mr. Stephens communicated his foregoing understanding to the Air Force before contract award" (finding 2). SUFI's motion for reconsideration does not show any basis for modifying finding 2.

SUFI argues that RFP ¶ 3.11 and SP ¶ 3.11 created an ambiguity because SUFI thought that SP ¶ 3.11, omitting the critical phrase "as requested by the government," superseded RFP ¶ 3.11 (app. mot. at 3-4). We reject that argument as contrary to the

record evidence. The parties did not agree that SP provisions superseded corresponding RFP paragraphs, but instead included both the RFP and corresponding SP paragraphs in the SOW. Those paragraphs must be harmonized so as to give meaning to both, wherever possible. See *Hol-Gar Manufacturing Corp. v. United States*, 351 F.2d 972, 979 (Ct. Cl. 1965). We perceive no ambiguity between SP ¶ 3.11 and RFP ¶ 3.11; they can be readily harmonized.

Finally, the fact that respondent ordered telephone service at *some* new buildings on bases SUFI serviced (findings 38, 43, 46), does not establish that SUFI had the right to service *all* such new buildings.

Accordingly, we deny appellant's motion for reconsideration.

Dated: 1 November 2004

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DAVID W. JAMES, JR.  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

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MONROE E. FREEMAN, JR.  
Administrative Judge  
Acting Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 54503, Appeal of SUFI Network Services, Inc., rendered in conformance with the Board's Charter.

Dated:

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CATHERINE A. STANTON  
Recorder, Armed Services  
Board of Contract Appeals