

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
United Healthcare Partners, Inc.) ASBCA No. 56939
)
Under Contract No. FA4608-07-M-S060)

APPEARANCE FOR THE APPELLANT: Mr. David D. Cooper
Chief Executive Officer

APPEARANCES FOR THE GOVERNMENT: Richard L. Hanson, Esq.
Air Force Chief Trial Attorney
Maj Theodore T. Richard, USAF
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE TUNKS
ON GOVERNMENT’S MOTION FOR RECONSIDERATION

On 13 August 2010, the government requested the Board to clarify its basis for denying the government’s motion for summary judgment in *United Healthcare Partners, Inc.* (UHP), ASBCA No. 56939, 10-2 BCA ¶ 34,513. We treat the request as a motion for reconsideration. UHP opposes the motion. Familiarity with the underlying decision is presumed.

Although the government does not dispute the facts on which our decision is based, it requests clarification of two issues: (1) “[i]s the Board holding that a response to a Request for Quotation [sic] (“RFQ”) creates a binding contract even if the terms of the subsequent contract, signed by both parties, has different terms?” and (2) “[i]s the Board holding that the parol evidence rule does not exclude using extrinsic evidence when interpreting an unambiguous fixed price type contract?” (mot. at 1, 3). The answer to both of these questions is “no.”

With respect to the government’s first question, we did not hold that the solicitation was an RFQ. The solicitation sought bids for a contract for nurse triage services and the government accepted UHP’s offer, resulting in the formation of a bilateral contract. Thus, the government is incorrect in its assertion that this contract is governed by FAR 13.004, Legal effect of quotations.

With respect to the government’s second question, the acts and statements of the parties antecedent to and contemporaneous with the execution of the contract are admissible under the parol evidence rule and may be considered for the purpose of

interpreting and giving meaning to the terms of a contract. *Gibbs v. United States*, 358 F.2d 972, 979 (Ct. Cl. 1966); *Rio Construction Corp.*, ASBCA No. 54273, 04-1 BCA ¶ 32,534 at 160,912; RESTATEMENT (SECOND) OF CONTRACTS § 215 cmt. a. (1981). Here, we properly relied upon the instructions to the bidders which led to the offer which the government accepted.

We have carefully considered the arguments advanced by the government and, drawing in all reasonable inferences in favor of UHP, we affirm our prior decision.

Dated: 27 October 2010

ELIZABETH A. TUNKS
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

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

EUNICE W. THOMAS
Administrative Judge
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. 56939, Appeal of United Healthcare Partners, Inc., rendered in conformance with the Board's Charter.

Dated:

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