

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
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Griffin Services, Inc. ) ASBCA Nos. 52280, 52281  
 )  
Under Contract No. SP4700-97-D-0007 )

APPEARANCE FOR THE APPELLANT: Karl Dix, Jr., Esq.  
Smith, Currie & Hancock LLP  
Atlanta, GA

APPEARANCE FOR THE GOVERNMENT: Jo DuBose Spence, Esq.  
Assistant General Counsel  
Defense Logistics Agency  
Fort Belvoir, VA

OPINION BY ADMINISTRATIVE JUDGE KIENLEN  
UNDER ASBCA RULE 11

This case involves a contract for electrical operations and maintenance services at the Defense Logistics Agency Headquarters Complex at Fort Belvoir, Virginia. After an ineffective attempt to exercise the first option year, the government exercised successive options for continued performance of services for a total of six months. As a result of a summary judgment motion filed by the appellant, we found that the appellant was entitled to compensation for the period 1 January through 31 March 1998 (*Griffin Services, Inc.*, ASBCA Nos. 52280, 52281, 02-2 BCA ¶ 31,943). Also as a result of a summary judgment motion filed by the appellant, we decided the quantum issues for that period and awarded the appellant \$111,888.38 plus interest (*Griffin Services, Inc.*, ASBCA Nos. 54246, 54247, 2004 WL 1637548 (20 July 2004)).

What remains for us to decide are appellant's claims for services performed during the earlier period 1 October through 31 December 1997. Under ASBCA No. 52280, the appellant claims that the government twice improperly exercised options for the continued performance of the contract work during the period of 1 October through 31 December 1997. Under ASBCA No. 52281, the appellant claims that the government ordered extra work that was not required under the contract. The case is decided on the record in accord with ASBCA Rule 11. Both entitlement and quantum are for consideration. We find in favor of the government in ASBCA No. 52280, and in favor of the appellant, in part, in ASBCA No. 52281.

## FINDINGS OF FACT

On 21 February 1997 the government awarded Contract No. SP4700-97-D-0007 to Griffin Services, Inc., the appellant, for the operation, maintenance, and repair of electrical distribution systems, fire detection systems, and security and sound systems, at the Defense Logistics Agency Headquarters Complex at Fort Belvoir, Virginia (R4, tabs 3, 4).

The contract was for a base period of 1 April to 30 September 1997. There were four one-year option periods. Part of the work was firm fixed priced and part of the work was hourly indefinite quantity work. The monthly fixed price for the base period services was \$26,071. The monthly fixed-price for the first option year services was \$24,712. (R4, tabs 1, 3)

The contract incorporated in full text the clause found at FAR 52.217-9 and entitled, OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 1989) (R4, tab 2, amendment 0005 at 2, clause B.26). The contract also incorporated in full text the clause found at FAR 52.217-8 and entitled, OPTION TO EXTEND SERVICES (AUG 1989), which read:

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension [sic] of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

(R4, tab 1, solicitation SP4700-96-R-0032, clause B.20) The Schedule did not provide for a specific separate period during which this option could be exercised. The only time periods in the Schedule were the base and option periods.<sup>1</sup>

By letter of Tuesday, 19 August 1997, the contracting officer provided a preliminary written notice of intent to renew the contract for the first option year. As noted on the face of that letter, Griffin received the letter on Monday, 25 August 1997. (R4, tab A7) By letter of 28 August 1997, Griffin replied that the notice was not provided at least 60 days before the contract was to expire; and, therefore, the right to exercise the option had

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<sup>1</sup> More recent versions of the Option to Extend Services clause provided for the insertion of a specific number of days prior to contract completion for the exercise of this option. These have also been the source of litigation. *See American Contract Services, Inc.*, ASBCA No. 46788, 94-2 BCA ¶ 26,855, *aff'd on recon.*, 94-3 BCA ¶ 27,025.

expired. Griffin wrote that it “does not waive” the requirement for a timely notice of intent to exercise the option. Griffin also asserted that the actual contract requirements and the cost of performance were significantly more than it expected. (R4, tab A8; *see aff.* of Richard Rushton at ¶ 3)

In its 28 August letter, Griffin offered to waive the notice requirement if the parties could agree on an equitable adjustment. By letter of Tuesday, 23 September 1997, the government rejected Griffin’s equitable adjustment proposal and advised Griffin that the government intended to re-solicit the contract (R4, tabs A10, A11). That 23 September 1997 letter enclosed Modification No. P00003, which unilaterally extended the contract through 31 October 1997, pursuant to Clause B.20 entitled, Option to Extend Services. The copy of the original letter in the Rule 4 file reflects that it was received on Friday, 26 September 1997, four days prior to the expiration of the then current base contract period. The appellant does not contend that it was received on a later date. (R4, tabs 4, A11) We find that the letter was received on 26 September 1997.

The government unilaterally extended the contract through 31 December 1997, by unilateral Modification No. P00004, dated Friday, 24 October 1997. We find, based on the normal timeframes for the exchange of communications by mail between the parties, that Griffin received this modification on or before Friday, 31 October 1997. (*See, e.g.*, letter of 19 August 1997 (R4, tab A7) discussed above; letter of 23 September 1997 (R4, tab A11) discussed above; and letter by Griffin of 31 October 1997 (R4, tab A13) to which the government responded by Thursday, 6 November 1997 (R4, tab A15)). The appellant does not contend that it was received on a later date.

There was a subsequent extension of contract services through 31 March 1998. That extension and the appellant’s claim for compensation already has been the subject of prior decisions, as discussed above. Those discussions will not be repeated here.

Griffin continued to provide electrical operations and maintenance services from 1 October 1997 through 31 December 1997. Griffin had actual costs higher than the monthly fixed price provided by the contract. On 28 January 1999 Griffin filed a claim for actual costs incurred during the extended contract period of performance. The government received the letter four days later, on Monday, 1 February 1999. (R4, tab A17) The appellant appealed from the contracting officer’s deemed denial of this claim. That appeal was docketed as ASBCA No. 52280.

On 11 February 1999 Griffin filed claims under the contract for extra services performed that exceeded the scope of work required under the contract. We find that, like the 28 January 1999 claim, the government received the letter four days later, on Monday, 15 February 1999. Those claims were for the maintenance and repair of motorized blinds in the amount of \$4,048 and for additional costs due to inaccurate and misleading nature of the equipment inventory in the amount of \$12,500. (R4, tab B4)

With respect to this claim for extra work, we find, based on government admissions in the pleadings and documents in the record:

The inventory did not contain a provision for maintenance and repair of motorized vertical blinds. Griffin was directed by the government to repair and maintain the vertical motorized blinds. Based on subcontractor invoices in the record, we find that Griffin incurred additional costs in the amount of \$4,048 for the repair and maintenance of the motorized blinds during the base period and extensions through December 1997. (Compl. & answer ¶ 32; R4, tab B4)

The inventory misrepresented the nature, type, and number of certain light fixtures. In particular CA and CY fixtures were misclassified as incandescent light fixtures. Griffin incurred increased costs due to the significantly more expensive replacement bulbs necessitated by this specification error. In addition to misclassification of the CA and CY light fixtures, B fixtures and Exit lights were omitted completely from the inventory. The contract provided that the government “will” adjust the contract price for validated errors in the inventory quantities. Griffin identified the above errors due to the misleading and inaccurate inventory. Those errors were recognized by the government and were validated and compensated with respect to the base period of the contract through 31 September 1997. Griffin has not been compensated by the government for these errors during the extended period of performance during the period 1 October through 31 December 1997. Griffin originally claimed \$12,500 for these costs during the period 1 October 1997 through 31 March 1998. The record for the period 1 October through 31 December 1997 only supports increased inventory costs of \$3,419, and, we so find. (Compl. & answer ¶¶ 33, 34, 35, and 37; R4, tab B4)

#### DECISION

*ASBCA No. 52280*

With respect to the option exercises, the appellant contends that the government ordered it to provide contract and other services after the expiration of the basic contract period, that such orders were constructive changes, and that it was entitled to an equitable adjustment for the changed work. As we noted above, we previously found that the appellant was entitled to compensation for work performed between 1 January and 31 March 1998, because the government failed to properly exercise the option to extend services. *Griffin*, 02-2 BCA ¶ 31,943.

In that prior decision we did not have a government motion for summary judgment; also, we did not have any statement of undisputed material facts that would have supported a finding that the option to extend services was properly exercised during the period 1 October through 31 December 1997. Based on the current record, we have found that the

government properly exercised the option to extend services on 23 September 1997 and again on 24 October 1997. We found that both exercises were in writing.

The appellant argued that this was not a timely exercise of the option to extend services. Because no specific time was mentioned in the Schedule, the appellant argued that the government was required to give 60 days notice. We found otherwise in our earlier decision. (*Griffin*, 02-2 BCA ¶ 31,943) We find the same with respect to the time period involved here.

When the option is to be exercised “within the period specified in the Schedule” and the Schedule does not require any specific number of days for advance notice or exercise of the option, the option may be exercised at any time during the period of contract performance specified in the Schedule then in effect. *Moore’s Cafeteria Services, Inc.*, ASBCA No. 28441, 85-3 BCA ¶ 18,187 at 91,326; *Contel Page Services Inc.*, ASBCA No. 32100, 87-1 BCA ¶ 19,540 at 98,735. *See also*, 15 LORD, WILLISTON ON CONTRACTS § 46:12 at 459-60 (4<sup>th</sup> ed. 2000):

The principle that time is of the essence of an option contract is just as true of options embodied in other contracts, such as leases with an option to renew, as it is of a pure option. Thus, where a lease or contract contains an option to renew it for a further term but fails to provide a time limit within which the option must be exercised, the time for giving notice of renewal does not usually extend beyond the last day of the original term.

In both exercises of the option, the government timely executed the writing during the then current period of contract performance.

We also found that the appellant received the option exercises prior to the expiration of the then current contract period. Having timely delivered the option exercise, the options were properly exercised and the appellant was required to perform the contract work in accordance with the prices then current. *E.g.*, *Cessna Aircraft Company*, ASBCA No. 43196, 96-1 BCA ¶ 27,966 at 139,697.

*ASBCA No. 52281*

With respect to appellant’s claim for services beyond the scope of the contract, we found, based on government admissions and documents in the record, that: the appellant was required to perform extra services for the maintenance and repair of motorized blinds in the amount of \$4,048, and the appellant was required to provide extra services due to an inaccurate and misleading equipment inventory in the amount of \$3,419. Both of these

items of additional work were constructive changes for which the appellant is entitled to an equitable adjustment in the amounts found above.

CONCLUSION

So much of the appellant's appeal in ASBCA No. 52280 that relates to the period of performance from 1 October through 31 December 1997 is denied. That portion of the appellant's appeal in ASBCA No. 52281 that relates to extra work performed on the motorized blinds and that relates to the extra work during the period 1 October through 31 December 1997 that is due to the inventory defects is sustained in part, as set forth above; it is otherwise denied. The appellant is awarded the amount of \$7,467, together with such interest that accrues under section 12 of the Contract Disputes Act of 1978, as amended (41 U.S.C. § 611), from 15 February 1999 until paid.

Dated: 27 August 2004

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RONALD A. KIENLEN  
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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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 Nos. 52280, 52281, Appeals of Griffin 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