

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Computer Sciences Corporation) ASBCA No. 56162
)
Under Contract No. DAAB07-00-D-E252)

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OPINION BY ADMINISTRATIVE JUDGE PARK-CONROY
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

At issue are cross-motions for summary judgment on Count One of appellant Computer Sciences Corporation’s (CSC) First Amended Complaint relating to bilateral Modification No. P00005. We deny the Army’s motion and grant CSC’s cross-motion on the issue of contact interpretation.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTIONS

Contract No. DAAB07-00-D-E252 was awarded to CSC by the U.S. Army Communications-Electronics Command (CECOM) on 29 December 1999 to modernize the Army’s logistics processes and practices, subsequently designated the Logistics Modernization Program (LMP) (R4, tabs 12, 174). The Contract Master Schedule was included as Attachment No. 4 to the contract and provided for deployment of the LMP in three phased Releases (R4, tab 16; amend. compl. and answer ¶ 39).

The Statement of Work (SOW) was set forth in Attachment No. 01 to the contract. Paragraph 4.4 of the SOW required CSC to prepare an Implementation Plan to address how it would implement and sustain modernized logistics services. (R4, tab 13 at

2372-73) The CSC Implementation Plan, Iteration 1, was delivered to the Army on 29 June 2001. It included the following statement:

At the end of the (approximately) 90-day implementation period a go/no-go decision must be made on whether or not to begin production with the new processes. This decision will be guided by a CATALYST-based, go-live checklist that will validate that all requirements have been satisfied and that the site is ready to begin processing in a production environment.

(R4, tab 96 at 3983)

The Contract Master Schedule was revised by bilateral Modification No. P00002, dated 27 April 2001, to provide LMP deployment schedules for five designated Commands and other sites instead of the three phased Releases originally specified. The five commands were CECOM Lead Command (sub-CLIN (SLIN) 0023AA), TACOM Command 2 (Tank Automotive and Armaments Command) (SLIN 0023AB), AMCOM Command 3 (Army Aviation and Missile Command) (SLIN 0023AC), SBCCOM Command 4 (Biological and Chemical Command) (SLIN 0023AD), and OSC Command 5 (Operations Support Command) (SLIN 0023AE). (R4, tab 68 at 3747, tab 70 at 3768-70) The CECOM Lead Command deployment is referred to by the parties as Deployment One.

The deployment schedules were further revised by bilateral Modification Nos. P00004, dated 6 May 2002, and P00005, dated 28 March 2003 (R4, tabs 118, 120, 174). The word “notional” was not used in Modification No. P00004 (R4, tabs 118, 120).

Section A, Supplemental Information, of Modification No. P00005 provided in relevant part:

2. The Deployment schedule listed in Attachment No. 04 (SLIN 0023AA through SLIN 0023AE) is notional at this time. The order of deployment to the four Commands after the CECOM Deployment may change. The names of some of the Commands and other Government sites (as listed under the five Commands) have changed and this modification does not reflect those changes. SLINs 0023AA through 0023AE will be later revised (as mutually agreed) to reflect the discussed changes.

(R4, tab 174 at 5020)

Modification No. P00005 revised the Contract Master Schedule (Attachment No. 04) to reflect the following LMP deployment dates for the five commands:

CLIN	Task Name	Start	Finish
0023	DEPLOYMENT	21 Mar 03	1 Mar 04
0023AA	CECOM Lead Command	21 Mar 03	2 June 03
0023AB	TACOM Command 2	2 Jun 03	3 Nov 03
0023AC	AMCOM Command 3	3 Nov 03	1 Mar 04
0023AD	SBCCOMM Command 4	3 Nov 03	1 Mar 04
0023AE	OSC Command 5	2 Jun 03	3 Nov 03

(R4, tab 174 at 5045–48) The parties agree that the finish date for each command is the deployment date for LMP. It is also referred to as the “go-live” date.

As revised in Modification No. P00005, the Contract Master Schedule also reflected that “Data Processing for Modernized Services for Contract Month One through Contract Month 120” (SLIN 0016AA) and the related “Performance Bonus” (SLIN 0016AB) for these services were to begin 2 June 2003 (R4, tab 174 at 5041). Paragraph 6.2.3 of the SOW, Attachment No. 01 to Modification No. P00005, stated that these fees and performance bonuses “are based on the rollout to the number of commands and in the contract month as set forth in Attachment 13” and that “[d]ata processing services will be reimbursed as each Command is rolled out” (*id.* at 5038).

Attachment No. 13 to Modification No. P00005, “MONTHLY SERVICES PRICING AND PERFORMANCE BONUS CONTRACT YEAR ONE THROUGH CONTRACT YEAR TWELVE,” reflects revised dates for monthly data processing service fees and performance bonuses that are consistent with the revised command deployment schedule reflected in Attachment No. 04. Specifically, Attachment No. 13 shows monthly service fees beginning in June 2003 for “CMD 1” (Command One/CECOM Lead Command) when it became an “Installed” command. (R4, tab 174 at 5143-44) The word “notional” does not appear in Attachment Nos. 01, 04 or 13 to Modification No. P00005.

CSC’s First Amended Complaint, “COUNT ONE, ASBCA No. 56162, Government Delay of Deployment One,” seeks \$18,279,826, plus profit (amend. compl. ¶¶ 38-72). It alleges that Modification No. P00005 established 21 March 2003 as the start date for Deployment One activities and 2 June 2003 as the “go live” date. It further alleges that the word “notional” refers to the sequence in which the commands were to receive LMP services (*id.* ¶¶ 40-41). The Army’s answer to CSC’s First Amended Complaint denies “the implication that the March 21, 2003 or June 2, 2003 dates were firmly established” (answer ¶ 40). It avers that these dates were “notional” and denies

any inference that the term referred to the sequence in which the commands were to receive LMP services (*id.* ¶ 41).

CSC further alleges that the Army ultimately decided to delay Deployment One to 7 July 2003 and that the delay was attributable to the Army's failure to obtain necessary approvals (amend. compl. ¶¶ 61-64). The Army does not dispute that Deployment One did not occur until 7 July 2003, but does deny the change in the deployment date was due to its failure to acquire necessary approvals (answer ¶ 63). CSC alleges that the deployment delay constituted a constructive change to the contract, a breach of the Army's duty of good faith, fair dealing and to cooperate, and interference with and delay to CSC's performance (amend. compl. ¶¶ 65-68).

Neither party has asserted that there are any genuine issues of material fact in dispute regarding interpretation of Modification No. P00005.

DISCUSSION

The legal standards we apply here are familiar. Summary judgment is appropriate where there are no genuine issues of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987). When considering cross-motions, we are to evaluate each motion on its own merits and take care to draw all inferences in favor of the party opposing the motion. *Mingus*, 812 F.2d at 1391.

Contract interpretation begins "with the language of the written agreement." *NVT Technologies, Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004). The plain and unambiguous meaning of the written agreement controls, with reasonable meaning given to all of its parts. *Hercules Inc. v. United States*, 292 F.3d 1378, 1380-81 (Fed. Cir. 2002).

Contract interpretation cases are subject to summary disposition where the contract language is unambiguous. *Muniz v. United States*, 972 F.2d 1304, 1309 (Fed. Cir. 1992); *P.J. Maffei Bldg. Wrecking Corp. v. United States*, 732 F.2d 913, 916 (Fed. Cir. 1984). A contract provision is clear and unambiguous if there is only one reasonable interpretation. *C. Sanchez and Son, Inc. v. United States*, 6 F.3d 1539, 1544 (Fed. Cir. 1993). Conversely, a provision is ambiguous if it is susceptible to two different, yet reasonable interpretations, each of which is consistent with the contract terms and conditions. *See Lockheed Martin IR Imaging Systems, Inc. v. West*, 108 F.3d 319, 322 (Fed. Cir. 1997). It is not enough that the parties have different interpretations; both must be within the "zone of reasonableness." *Metric Constructors, Inc. v. NASA*, 169 F.3d 747, 751 (Fed. Cir. 1999).

The Army characterizes Count One of the First Amended Complaint as involving “the interpretation of a single simple sentence using the common meaning of the words in the sentence” (mot. at 7). It contends that the only reasonable interpretation of the first sentence in paragraph 2 of Section A, Supplemental Information, of Modification No. P00005 is that the “Deployment schedule” is “notional.” Relying upon a definition of “notional” as “having an abstract or speculative character” from WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1981), it asserts that the deployment schedule, specifically the 2 June 2003 date upon which CSC relies to measure delay, was not fixed and contractually binding. In short, the Army interprets the word “notional” as applying only to the dates reflected in the Contract Master Schedule, Attachment No. 04. According to the Army, its interpretation is consistent with CSC’s 2001 Implementation Plan which envisioned a 90-day implementation period following which a “go/no-go” decision would be made before Deployment One would “go live” and that a “go/no-go” decision means that a “go live” date is not a fixed contractually binding date, irrespective of whether it is referred to as “notional.”

CSC’s cross-motion is also restricted to matters of contract interpretation. CSC’s position is that the Army’s interpretation is unreasonable because it relies upon a single word in a single sentence of Modification No. P00005 and an Implementation Plan that was prepared long before the modification was issued. CSC contends that a reasonable interpretation of Modification No. P00005 requires that all parts of the modification be read together as a whole, including paragraph 2 of Section A and Attachment Nos. 01, 04 and 13. According to CSC, such a reading requires the conclusion that 2 June 2003 was the contractually required CECOM deployment date and that the word “notional” used in the topic sentence of paragraph 2 of Section A of Modification No. P00005 refers to the possibility, mentioned in subsequent sentences, that the order of deployment for the remaining four commands might change and that the names of the commands had changed. CSC also points out that the word “notional” is defined in WEBSTER’S II NEW COLLEGE DICTIONARY 766 (3d ed. 2005) as “[c]onveying an idea of a thing or action.”

We are satisfied by application of established rules of contract interpretation that CSC’s interpretation of the contractual provisions at issue here is the only reasonable interpretation and that the Army’s interpretation is not within the zone of reasonableness. *Metric Constructors*, 169 F.3d at 751.

CSC’s interpretation considers Modification No. P00005 as a whole and gives it reasonable meaning, avoiding conflict or rendering meaningless any of its terms. *See Lockheed Martin IR Imaging Systems*, 108 F.3d at 322. It considers all four sentences in paragraph 2 of Section A, Supplemental Information, of Modification No. P00005 and the relevant attachments. CSC’s interpretation reads the word “notional” in the first sentence of paragraph 2 in the context of the rest of the paragraph, which says nothing whatsoever about any changes to the start and finish dates specified for the LMP

deployments. Rather, the paragraph discusses the possible schedule changes that relate to the order of the deployments “after the CECOM Deployment” and the changes that already had occurred in command names and other sites. It recognizes that SLINs 0023AA through 0023AE will be revised by mutual agreement to reflect these changes. This analysis is not precluded by *Gramoll Constr. Co.*, ASBCA No. 44514, 96-1 BCA ¶ 27,975, as the Army asserts. Unlike the arguments addressed in *Gramoll*, CSC’s interpretation of paragraph 2 reads it as a whole without rendering any of its four sentences or the word “notional” meaningless. *E.g.*, *United States v. Johnson Controls, Inc.*, 713 F.2d 1541, 1555 (Fed. Cir. 1983).

CSC’s interpretation also considers the attachments to Modification No. P00005, in particular Attachment No. 04, the Contract Master Schedule, which shows a finish/deployment date of 2 June 2003 for CECOM Lead Command. The Contract Master Schedule does not qualify this date or any of the other deployment dates for SLINs 0023AA through 0023AE. The Contract Master Schedule similarly reflects, without qualification, that data processing services (SLIN 0016AA) and the related bonus (SLIN 0016AB) for them are to begin on 2 June 2003. Attachment No. 13, which details the Monthly Services Pricing and Performance Bonuses, reflects revised dates that are consistent with the dates reflected for deployments and the related data processing services reflected in Attachment No. 04. Specifically, it shows the monthly services fees beginning in June 2003, when CECOM Lead Command is installed. Paragraph 6.2.3 of the SOW, Attachment No. 01, reinforces the payment of data processing fees as each of the five commands is “rolled out.” None of these attachments use the word “notional” or any other comparable term.

The Army’s interpretation, in contrast, relies upon one word—the word “notional”—in the first sentence of paragraph 2, which it selectively defines to mean “speculative.” We have a number of difficulties with the Army’s interpretation. First, we do not find the use of a selected dictionary definition particularly meaningful in the interpretation of this contract provision. *See Aerometals, Inc.*, ASBCA No. 53688, 03-2 BCA ¶ 32,295 at 159,800. Indeed, as CSC points out, there are other dictionary definitions of the word “notional,” such as that taken from WEBSTER’S II NEW COLLEGE DICTIONARY 766 (3d ed. 2005) which defines “notional” as “[c]onveying an idea of a thing or action.”

Next, the Army reads the word “notional,” as it has defined it, in isolation, applying it only to the start and finish/deployment dates in the Master Deployment Schedule. To do so, it must resort to reading each of the remaining three sentences of paragraph 2 as being independent of all of the other sentences, thereby rendering them meaningless to each other and the paragraph as a whole.

The Army's interpretation also conflicts with and ignores provisions in the relevant attachments to Modification No. P00005, none of which use the word "notional" or any other language qualifying the deployment dates. With respect to Attachment No. 04, the Army focuses upon the 2 June 2003 finish/"go live" date for CECOM Lead Command while at the same time ignoring the fact that the very same date is the scheduled start date for the provision of data processing and related bonuses for the LMP services. It also disregards Attachment Nos. 01 and 13, which tie these service fees and performance bonuses to the same deployment dates reflected in Attachment No. 04. The Army's response to CSC's arguments discussing the existence and consistency of these dates is the unreasonable assertion that these services and the payment schedules change to incorporate the "Deployment One go-live (Finish) date whatever it is" (gov't reply at 6).

Further, we agree with CSC that the Implementation Plan is not material to the interpretation of Modification No. P00005. It did not set deployment dates. Rather, it is simply a plan written after contract award and in furtherance of contract performance that outlines processes to be undertaken in order to "go-live." We perceive no reason why a general description of implementation processes should conflict with specific deployment dates specified in a subsequent bilateral contract modification. In this regard, we note that while the Implementation Plan was in existence when Modification No. P00004 was executed, Modification No. P00004 does not contain the word "notional" and does not reflect any uncertainty as to the deployment dates it specified. In any event, the Implementation Plan represents extrinsic evidence which we will not consider to change contract terms that are clear. *See McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996).

There are no genuine issues of material fact in dispute relating to the interpretation of Modification No. P00005. We conclude that CSC's interpretation is the only reasonable interpretation of Modification No. P00005 and, accordingly, that 2 June 2003 was the fixed deployment date for CECOM Lead Command. Thus, we deny the Army's motion for summary judgment on Count One of the First Amended Complaint and grant CSC's cross-motion on the issue of contract interpretation.

It is not disputed that the deployment did not occur until 7 July 2003. However, CSC still must carry its burden demonstrating it is entitled to recovery due to the delay in deployment under at least one of the theories of recovery it has alleged.

CONCLUSION

The Army's motion for summary judgment on Count I of the First Amended Complaint is denied. CSC's cross-motion for summary judgment interpreting

Modification No. P00005 as setting 2 June 2003 as the fixed deployment date for CECOM Lead Command is granted.

Dated: 15 June 2009

CAROL N. PARK-CONROY
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. 56162, Appeal of Computer Sciences Corporation, rendered in conformance with the Board's Charter.

Dated:

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