

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
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Pacific Coast Community Services, Inc. ) ASBCA No. 56754  
 )  
Under Contract No. F04626-03-F-7003 )

APPEARANCE FOR THE APPELLANT: Mr. Christopher Flynn  
President

APPEARANCES FOR THE GOVERNMENT: Richard L. Hanson, Esq.  
Air Force Chief Trial Attorney  
Christopher S. Cole, Esq.  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE YOUNGER  
ON THE GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT

In this appeal filed by Pacific Coast Community Services, Inc. (Pacific Coast) for the recovery of additional costs incurred for alleged out-of-scope utilization of storage space, the Air Force has moved for summary judgment. The Air Force contends that there is no genuine issue of material fact regarding its allegation that Pacific Coast cannot demonstrate that additional costs were incurred as a result of government direction to provide 6,000 square feet of storage as required by its contract, even if an out-of-scope utilization occurred. Pacific Coast opposes the motion, arguing chiefly that the 6,000 square feet figure is not conclusive because it was only used as a reference point for cost negotiations. We grant the motion and deny the appeal.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

By letter dated 27 September 2002, NISH, a national non-profit agency to create job opportunities for people with severe disabilities, submitted to the Air Force a price proposal on behalf of Pacific Coast for a firm-fixed price and cost reimbursement follow-on contract for furnishings management operations at Travis Air Force Base, CA (R4, tab 14). The contemplated contract was to be awarded under the Javits-Wagner-

O'Day (JWOD) Program, which provides employment opportunities for Americans who are blind or have other severe disabilities.<sup>1</sup>

Pacific Coast's price proposal included contract line items (CLINs) for the base year (CLIN 0001), and for each option year (CLINs 0002 – 0005). CLIN 0001 (and each of the subsequent option year CLINs) was divided into two segments, AA and AB, which corresponded to the "furnishing management operations" and "cost reimbursement parts and maintenance" portions of the contract. CLIN 0001, 0001AA reads as follows: "Services, Nonpersonal: Provide all tools equipment, [p]ersonnel, materials, supplies, [t]ransportaion and supervision to provide Furnishing Management Operation Services for Travis AFB, Ca. [sic] as defined in the Statement of Work, dated 27 July 2002." (R4, tab 14 at 5)

Pacific Coast's price proposal included "Cost Breakdown – Services" which summarized the proposed direct costs for the "furnishings management service" portion of the contract. Under "Other Direct Charges" is listed the following:

....		
e. Rental	([Attachment] F)	\$47,362
....		

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<sup>1</sup> In 1938, Congress passed the Wagner-O'Day Act to provide employment opportunities for blind people to manufacture mops and brooms to sell to the Federal Government. In 1971, Congress broadened the Act to include people with severe disabilities and to allow the provision of services to the Federal Government. The resulting program affords a mechanism for government purchases of products and services provided by nonprofit agencies that employ people with disabilities. *See* 41 U.S.C. §§ 46-48.

(Rule 4, tab 14 at 20) Attachment F is entitled “Summary of Rental Costs” and is reproduced below:

Item No. & Description	Quantity, Rented/YR PROPOSED	Rate/Rental Each/YR PROPOSED	Annual Rental Costs PROPOSED	Comments (PROPOSED )
Uniform Rentals	1.00	\$1,020.88	\$1,020.88	
Vehicle #1	1.00	\$8,180.89	\$8,180.89	
Warehouse Space	6,000.00	\$6.36	\$38,160.00	\$.50 per sq. ft. per month
Total Rental Price:			\$47,361.77	

(*Id.* at 19)

In its cover letter to Pacific Coast’s proposal to the Air Force, NISH stated:

...This proposal has been approved by Pacific Coast Community Services, Inc. and is submitted on its behalf...

Since this is a firm fixed price contract, other than a change in the requirements, the only allowable price changes would be in accordance with the attached Price Proposal for Follow-On Years.

Please sign the statement below and return this letter ... by September 30, 2002 if you agree with the proposed price.

(R4, tab 14 at 1) The contracting officer signed Pacific Coast’s proposal by date of 30 September 2002, with the notation “I concur with the performance price of \$14,353.00 per month for Furnishings Management Services at Travis Air Force Base, CA. I also concur with the method of negotiating follow on year pricing.” (*Id.* at 2) Pacific Coast alleges that its “price proposal was accepted by the Air Force essentially as submitted – labor being the only cost category significantly reviewed” (compl. ¶ A3).

By date of 1 October 2002, the Air Force awarded Contract No. F04626-03-F-7003 to Pacific Coast for one base year plus four option years (R4, tab 1 at 1). The Air Force subsequently exercised all four option years (R4, tab 11).

The Statement of Work (SOW) contained the following requirements:

**1.2.1.** Request, receive, issue, store, budget, deliver, and pick up all government owned furnishings authorized for use in government owned/leased facilities/quarters. Make partial deliveries based upon availability of assets. Accomplish delivery and/or removal of furnishings in Unaccompanied Housing and Lodging facilities as scheduled.

....

**1.3.1 CONTROL FURNISHINGS INVENTORY.** Schedule, deliver, and pick up furnishings to include assembly and disassembly of furniture items. Deliver and install appliances. Accomplish deliveries and pickups within 2 workdays of request by authorized customers.

....

**1.3.3** The contractor may be required to store, remove or install all furniture in a dormitory(s) in order to prepare a building for renovation or furnish a new/renovated facility(s).

(R4, tab 1)

Effective 20 August 2004, the parties entered into bilateral Modification No. P00003, amending the statement of work. The parties agreed to change paragraph 1.3.1 to paragraph 1.3, and paragraph 1.3.3 to paragraph 1.3.2. These paragraphs thereupon provided as follows:

**1.3 CONTROL FURNISHINGS INVENTORY.** Schedule, deliver, and pick up furnishings (includes to and from off-base storage facility) to include assembly and disassembly of furniture items. Deliver and install appliances. Accomplish deliveries and pickups within 2 workdays of request by authorized customers of 10 or less pieces. "Mass moves" (above 10 pieces) will be negotiated separately.

....

**1.3.2** Any requirement to store, remove or install all furniture in a dormitory(s) in order to prepare a building for renovation or furnish a new/renovated facility(s) is outside the scope of this contract (assuming the requirement exceeds 10 pieces removed/installed in 2 days). Such “mass moves” will be negotiated separately.

(R4, tab 4 at 10) (boldface and underscoring in original)

In the spring of 2006, during option year three, the Air Force had a surplus of furniture to store due to dormitory closures (govt. mot. at 5). In April 2006, the Air Force conducted an inspection of Pacific Coast’s warehouse space at 631 Railroad Avenue and discovered that the “storage facility used to support the...contract only consisted of 2,500 sq. ft. not the 6,000 sq. ft. required by the contract” (R4, tab 15). By letter dated 7 April 2006, the contracting officer directed Pacific Coast to “forward documents (i.e. rental agreement etc.) supporting the rental location and rental/lease costs incurred for a 6,000 sq. ft. warehouse storage facility as of the start date of this contract.” (*Id.*)

In its 19 April 2006 response, Pacific Coast submitted three leases pertaining to its space at the 631 Railroad Avenue location to “confirm[] that [Pacific Coast] has 6,000 Square foot [sic] of ware house space available” (R4, tab 16 at 1). The first document was a copy of Pacific Coast’s lease dated 1 October 2002 for 2,500 square feet with a term of five years (*id.* at 2-5). The other two documents were copies of leases dated 17 April 2006, within ten days of the contracting officer’s 7 April 2006 letter, for 1,650 and approximately 2,550 square feet, respectively (R4, tab 16 at 6-13; app. supp. R4, tab 1).

In May or June of 2006, the Air Force, using its own labor, moved surplus dormitory furniture into some of the additional storage space Pacific Coast provided (compl. and answer ¶ B3). It appears undisputed that the Air Force kept the surplus dormitory furniture in storage through October 2006 (govt. mot. at 5).

On 26 December 2006, Pacific Coast submitted a request for an equitable adjustment, asserting that:

In April 2006 we placed additional warehouse space in service at the direction of the Air Force. Subsequently we determined that the sole requirement for this space is outside the scope of this contract as specified in paragraph 1.3.2. The cost of this space is in excess of costs anticipated by this contract. Actual cost data [in accordance with] FAR 15.403-3 is provided in Attachments 2 and 3.

We anticipate further incurred costs will end on October 17, 2006, the earliest opportunity to end the lease.

(R4, tab 19 at 1) The \$9,793.68 invoice attached to the equitable adjustment request included the following:

Description	Qty	Rate	Amount
Services performed in accordance with Contract Order #FO4626-03-F-7003 [sic], Dated September 30, 2002 Request for Equitable Adjustment Cost lease 4/17/2006 – 10/17/2006 Cost Lease Improvement Burden @ 9/5% NISH fee—4%	6 1	1,275.00 950.00 817.00 376.68	7,650.00 950.00 817.00 376.68

(*Id.* at 3)

By date of 17 December 2008, the contracting officer denied Pacific Coast’s request for an equitable adjustment (R4, tab 23 at 2-3), and by date of 3 February 2009 Pacific Coast requested a revised determination. By date of 6 February 2009, the government advised that the contracting officer’s decision remained “as is.” This timely appeal followed.

### DECISION

In moving for summary judgment, the Air Force contends that Pacific Coast incurred no additional reimbursable costs to store the dormitory furniture as the government provided the labor to move the furniture into and out of part of the 6,000 square feet of storage space that appellant was required to furnish by contract. For purposes of the motion only, the Air Force concedes that the requirement to store the furniture was outside the scope of the contract. Pacific Coast maintains that the “6,000 square feet” quantity in its proposal was used only during “cost negotiations” to arrive at a fair value for services and was not a definitive line item. According to Pacific Coast, the 6,000 square feet quantity was not offered specifically but only the “fair value” of the 6,000 square feet for which the parties contemplated Pacific Coast “could and would meet [Air Force] operational needs” in future. Pacific Coast also contends that the

storage of dormitory furniture by the Air Force was an out-of-scope contract requirement for which it should be compensated. (App. opp'n at 2-3)

In evaluating these contentions, we are guided by the familiar principles that summary judgment is appropriate where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987). Our task is not to resolve factual disputes, but to ascertain whether material disputes of fact – triable issues – are present. *John C. Grimberg Co.*, ASBCA No. 51693, 99-2 BCA ¶ 30,572 at 150,969. The nonmovant cannot rest upon conclusory pleadings or assertions but must respond with facts demonstrating that there is a genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Any doubt regarding the presence of a material fact in dispute must be resolved in favor of the party opposing the motion, *Lemelson v. TRW, Inc.*, 760 F.2d 1254, 1261 (Fed. Cir. 1985), which in this case is Pacific Coast.

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). 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). Clear and unambiguous contract provisions must be given their plain and ordinary meaning. *L-3 Communications Link Simulation and Training*, ASBCA No. 54798, 06-2 BCA ¶ 33,294 at 165,099 (citing *McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996)).

We first determine whether Pacific Coast was required to provide the Air Force with 6,000 square feet of storage space. In its proposal, Pacific Coast offered the Air Force 6,000 square feet of storage space at a projected cost of \$.50 per square foot plus markups, which the Air Force accepted. Pacific Coast asserts that the offer to provide 6,000 square feet of storage space at a specified price was for cost negotiation purposes only, and that the fair value of being prepared to provide the 6,000 square foot quantity was what the parties contemplated. Pacific Coast alleges that the Air Force is trying to “[interpret] a cost negotiation item as a definitive contract line item, a separately paid for line item” (app. opp'n at 3). Pacific Coast presents no affidavits, negotiation documents, or other evidence to support its assertions.

Contract interpretation begins with the language of the written agreement. *Foley Co. v. United States*, 11 F.3d 1032, 1034 (Fed. Cir. 1993). The terms of an agreement are those expressed in the language of the parties. RESTATEMENT (SECOND) OF CONTRACTS § 5 cmt. a (1981). Where the provisions of an agreement are phrased in clear and unambiguous language, they must be given their plain and ordinary meaning and a court may not resort to extrinsic evidence to interpret them. *Coast Federal Bank*,

*FSB v. United States*, 323 F.3d 1035, 1040 (Fed. Cir. 2003); *Gosselin World Wide Moving NV*, ASBCA No. 55367, 09-2 BCA ¶ 34,242 at 169,234.

According to Pacific Coast's own statement, its proposal was accepted "essentially as submitted" with "labor being the only cost category significantly *reviewed*" (emphasis added). There were no negotiations between the Air Force and Pacific Coast. It is clear and unambiguous that Pacific Coast made a written offer through NISH, a third-party, of its price proposal to provide 6,000 square feet of storage space, an offer which the Air Force accepted. There were no qualifying statements or conditions attached to Pacific Coast's proposal. The cost of providing 6,000 square feet plus markups was itemized and included in Pacific Coast's overall proposed price which the government accepted. Thereafter, Pacific Coast received monthly payments under the contract which included the cost of leasing 6,000 square feet (\$3,000 plus mark-ups), even though the Air Force was utilizing only 2,500 square feet. We reject Pacific Coast's interpretation that the "6,000 square feet quantity" in its offer was proposed only to arrive at a fair value for its services to insure that Pacific Coast could and would meet all Air Force storage space needs in future because it is contrary to the plain meaning of the terms of its proposal, as well as the parties' performance under the payment provisions of the contract. Drawing all inferences in favor of Pacific Coast, it has failed to offer evidence in response to the government motion for summary judgment that would meet its burden of proving that the rental of 6,000 square feet of storage space was not a term of the contract. We conclude that there is no genuine issue of material fact that Pacific Coast was required by the terms of the contract to provide the Air Force up to 6,000 square feet of storage space for the specified price in the contract. Consequently, providing more than the 2,500 square feet of space that it had when its facility was inspected in April 2006 was not extracontractual work for which Pacific Coast is entitled to additional compensation.

We next consider whether there is a genuine issue of material fact in regard to the Air Force's direction to Pacific Coast to store dormitory furniture.

Pacific Coast contends that the Air Force direction to store dormitory furniture was outside the scope of the contract and is thus compensable. The Air Force concedes that it directed Pacific Coast to store the furniture but maintains that, inasmuch as the Air Force used its own labor to remove and install the furniture into storage space Pacific Coast was required by terms of the contract to provide, Pacific Coast did not incur additional, allowable costs and, therefore, cannot show that it is entitled to an equitable adjustment.

Paragraph 1.3.2 of the Statement of Work, as modified, provides that the requirement to store, remove or install all furniture from dormitories is outside the scope of the contract "assuming the requirement exceeds 10 pieces removed/installed in 2 days," and that "[s]uch 'mass moves' will be negotiated separately." Pacific Coast reads



this provision to mean that *any* direction by the Air Force simply to “store” all dormitory furniture was automatically outside the scope of the contract. Nevertheless, for purposes of this motion only, the Air Force concedes that the direction to store the furniture was outside the scope of the contract, but also contends that as a result of this direction, Pacific Coast cannot show that it was required to do anything beyond providing the 6,000 square feet of storage space which it was legally required to furnish under the contract.

We agree with the Air Force. The Air Force used its own labor to move, transport and install the furniture into the storage space that Pacific Coast provided. Pacific Coast did not remove the furniture from the dormitory, did not transport the furniture to the storage space, did not install the furniture in the storage area, and did not remove the dorm furniture from the storage space. All Pacific Coast did was provide the 6,000 square feet of storage space which it was obligated to do under the terms of its contract with the Air Force. All of the costs Pacific Coast enumerated in its claim are costs incidental to providing the contractually required storage space. Pacific Coast has failed to show there is any genuinely disputed question of material fact that would preclude grant of summary judgment.<sup>2</sup>

#### CONCLUSION

The government’s motion for summary judgment is granted. The appeal is denied.

Dated: 12 April 2010

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ALEXANDER YOUNGER  
Administrative Judge  
Armed Services Board  
of Contract Appeals

(Signatures continued)

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<sup>2</sup> As we read the claim, it does not assert breach of contract for failure to negotiate this move (*see* ¶ 1.3.2, last line).

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 No. 56754, Appeal of Pacific Coast Community 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