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ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -)
)
U.S. Bank National Association) ASBCA Nos. 62986, 63022
)
Under Contract No. N00189-15-C-Z012)

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OPINION BY ADMINISTRATIVE JUDGE D’ALESSANDRIS

At the times relevant to this appeal, the Department of Defense (DoD) used a third-party payment processing system to pay for transportation services. After a DoD entity arranged transportation services, the transportation service provider submitted its invoice to appellant, U.S. Bank National Association (US Bank), using the bank’s transaction reporting system, known as Syncada. After the invoice was submitted, a government employee certified the invoice in Syncada. Following certification, US Bank paid the transportation service provider. US Bank tracked the transactions using its financial settlement platform, known as Total Systems Services, Inc. (TSYS). US Bank then aggregated the payments by account (DoD entity) and submitted periodic summary invoices for reimbursement to the Defense Finance Accounting Service (DFAS). These invoices were also generated using US Bank’s Syncada program. US Bank additionally submitted delinquency reports to the government; however, the delinquency reports were generated using data from TSYS.

The contract at issue in this appeal took effect in January 2015; however, US Bank had been performing similar services under predecessor contracts dating back to 1998. In early 2020, there was a software platform upgrade of the DoD system necessitating a reconciliation of all payments on the existing platform. The reconciliation resulted in the discovery of a discrepancy of roughly \$1.5 million in the account for the Defense Logistics Agency (DLA) Susquehanna. The discrepancy originated prior to the start of

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the 2015 contract, when US Bank failed to report approximately \$1.5 million in transactions via Syncada that had been recorded in TSYS and paid to the transportation service provider.

In April 2023, the Board issued a decision granting in-part US Bank's motion for summary judgment. We held that US Bank had demonstrated entitlement to the unreimbursed amounts in the DLA Susquehanna account but found that there was a material factual issue regarding the exact amount of quantum, because US Bank cited different amounts for the balance due. *US Bank Nat'l Ass'n*, ASBCA Nos. 62986, 63022, 23-1 BCA ¶ 38,346. Familiarity with that decision is presumed.

The Board held an evidentiary hearing in September 2023. We conclude that US Bank has demonstrated entitlement to \$1,575,816.08 plus Contract Disputes Act (CDA) interest from the date of the contracting officer's receipt of US Bank's April 1, 2020 claim.¹

FINDINGS OF FACT

The facts necessary to resolve this appeal were largely decided in our opinion resolving the parties' cross-motions. *See id.* DoD uses an automated transportation payment and accounting system called the Transportation Third Party Payment System (TPPS) to manage, pay, and account for transportation services. Through TPPS, US Bank pays commercial carriers for government-approved transportation services, and DFAS reimburses the transportation payments to US Bank on behalf of federal agencies that use TPPS such as DLA. US Bank has been the TPPS contractor since 1998 under three contracts. *U.S. Bank*, 23-1 BCA ¶ 38,346 at 186,200.

On January 1, 2015, the government, acting through the U.S. Transportation Command, entered into Contract No. N00189-15-C-Z012 with US Bank for continued TPPS services (R4, tab 1 at 1, 3). The contract had a one-year base period starting on January 1, 2015, with four one-year option periods, and an option to extend services by two months, ending on February 29, 2020 (*id.* at 12-13).

Third-party payment processing consisted of several distinct steps. After a DoD entity requested transportation services, the carrier would invoice the government. The commercial carrier first submitted its invoice to US Bank using the bank's Syncada transaction processing system (tr. 28). U.S. Bank created that system for DoD to ensure that it was making all approved payments to commercial carriers (tr. 90). Next a government employee certified the invoice, or in some cases, the invoice was

¹ US Bank seeks CDA interest from the date of its revised claim (app. br. at 11 n.39).

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automatically certified by a business rule, again in Syncada (tr. 17-18). Following certification, US Bank would pay the commercial carrier (tr. 28). US Bank then aggregated the payments, by organization, and submitted a periodic invoice to DFAS (tr. 19).

The DoD summary invoices (also referred to as Powertrack invoices) contained the details of every paid transportation service provider Invoice (and associated bill of lading) organized by account, and thus by DoD organization and Accounting Installation Number (AIN), during a particular period (bi-weekly or monthly) (tr. 20-21; *US Bank*, 23-1 BCA ¶ 38,346 at 186,203). The DoD Invoice did not contain a running balance or otherwise reflect payments made in the applicable period, but only listed those Invoices paid by US Bank during that month. *US Bank*, 23-1 BCA ¶ 38,346 at 186,203.

DFAS subsequently reimbursed US Bank, based on the DoD Invoices (tr. 231); however, the DFAS payments rarely matched the amount of the US Bank invoices (tr. 24-25). Thus, US Bank, with the knowledge of DFAS, applied each payment to the appropriate organizational account using a first-in/first-out (FIFO) accounting convention (tr. 25; 23-1 BCA ¶ 38,346 at 186,203). Thus, US Bank applied payments from DFAS to the oldest existing unreimbursed invoice from a transportation service provider.

When the DFAS payments to a particular organizational account did not equal the amounts due for such account as reflected on the DoD Invoices, the TSYS system generated a rolling balance or a rolling credit (tr. 25-26). US Bank reported to DFAS, on a weekly basis, delinquencies by account for every DoD organization using the TPPS Program since the beginning of the program (tr. 26, 56-57). The delinquency reports were generated using US Bank's financial settlement system, known as Total Systems Services, Inc. (TSYS) (tr. 26, 56). The contract required both the invoices and the delinquency reports (R4, tab 3 at 10).

Thus, US Bank was generating Powertrack invoices for DFAS using Syncada, and delinquency reports using TSYS. As long as the two databases were fully synched, this was not a problem. However, if things had worked perfectly, the Board would not be involved in this matter. As best as can be determined from the record, US Bank reimbursed certain transportation service provider invoices that were somehow omitted from the summary invoices generated by US Bank and submitted to DFAS, on four dates.² Specifically, the payments to transportation service providers, according to TSYS, do not match the amounts invoiced to DFAS on invoices dated May 18, 2002 (\$1,547,370.32); June 19, 2009 (\$4,931.23); July 17, 2009 (\$6,972); and May 10, 2010

² US Bank suggests that the source of the discrepancy may have been, at least partially, due to data entry errors in the accounting code (App. reply at 16 n.58).

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(\$1,252.50), for a total of \$1,560,526.05 (tr. 175-89, 241; R4, tab 6 at 1, tab 281 at 4). US Bank did not retain copies of the individual transportation invoices for the 20-year length of the contract (tr. 106, 238-39). However, for the 2009 and 2010 invoices, US Bank provided information on the individual transactions for the 2-week billing periods for the Susquehanna account (over 30,000 transactions per invoice) and demonstrated that the transactions matched the total amount of debits recorded in TSYS for the billing period, what US Bank refers to as the “header level detail” (app. supp. R4, tab 35). For the 2002 invoice date, US Bank was only able to provide the header level detail (*id.*).

The Powertrack invoices were not official invoices under the contract; rather, the EDI files or Certifying Officer Manually Billed Accounting Code Transmittals were the official DoD invoices under the contract. *US Bank*, 23-1 BCA ¶ 38,346 at 186,204. That is, the individual shipper invoices were the official invoices, and not the duplicative summary invoice generated by US Bank. However, US Bank was required to “provide a summary invoice ... at a minimum once per month” to the government to receive reimbursement (R4, tab 3 at 10). Summary invoices were to summarize charges by line of accounting, transportation account code, and appropriation code (*id.* at 8, 10) Despite the fact that US Bank failed to reflect the correct amounts on the PSI invoices for the four periods in question, US Bank did report the correct amount on the delinquency reports generated based on TSYS data and submitted to DFAS. The government typically only reviewed the delinquency reports when an individual account was showing a payment three or more cycles past due (tr. 120).

We find that US Bank has demonstrated by a preponderance of the evidence that the amounts reflected in TSYS were paid to the transportation service providers; that the costs were eligible for reimbursement because they were approved by a government official or satisfied a payment rule; and were billed to the government by EDI or manual line of accounting.

In 2015, at the start of the contract at issue in this appeal, DoD was not up to date on its payments under the DLA Susquehanna Account and owed \$3,595,530.18 (tr. 79; *see also* tr. 62 (“amount was incorrect since the inception of the contract”)). Payments received by US Bank on the account following the start date of the contract were applied by US Bank against the existing balance on the DLA Susquehanna Account carrying over from the prior contract (tr. 25, 82-83). After the balance on the account was cleared of unpaid transactions predating the contract, US Bank began to apply new payments to transactions on the account under the contract (tr. 82-83). The TSYS data reflect shortfalls in excess of the claim amount in each of the relevant periods (app. supp. R4, tab 18, spreadsheets dated 03 11 15, 03 30 15, and 09 DEC 15). Thus, pursuant to the FIFO accounting convention, the uninvoiced amounts, approximately \$1.5 million,

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represent the most recent \$1.5 million in transactions invoiced to the DLA Susquehanna account, rather than the transactions in 2002, 2009, and 2010 that were omitted from invoices.

The discrepancy continued, unnoticed, until the parties began planning for a change to a new software platform that would require a reconciliation of the accounts. On June 26, 2016, the government informed US Bank that there existed a discrepancy between US Bank's weekly delinquency report and its monthly summary invoice for the DLA Susquehanna account. "U.S. Bank performed an initial investigation into the difference and determined this mismatch issue existed for many years." (R4, tab 5 at 3). The TPPS contract ended by its terms on February 29, 2020. After February 2020, TPPS moved to a new electronic platform and a new contract, necessitating a final reconciliation and closeout of all accounts on the legacy TPPS system (tr. 40-41). As part of this reconciliation and closeout, US Bank determined that there was a discrepancy in the documents that it sent the government (R4, tab 5 at 4).

On March 6, 2020, US Bank submitted a certified claim seeking payment for performance of TPPS services under Contract No. N00189-15-C-Z012 in the amount of \$332,720,945.55 and €9,247,063.81 and £170,517.85 (R4, tab 10 at 1). The March 2020 claim stated, "the Government has not reimbursed U.S. Bank for all payments made by U.S. Bank to the carriers/TSPs in accordance with the Contract" (*id.*). On March 26, 2020, US Bank submitted a statement to the government in the amount of \$1,575,819.40 as an "Other Debit" to the DLA Susquehanna account (R4, tab 4 at 1). On April 1, 2020, US Bank submitted a revised claim for \$99,834,250.16 and €5,375,966.03 and £136,674.15, "representing the total amount of Government-approved payments made to carriers/Transportation Service Providers ('TSPs') by U.S. Bank on behalf of and at the direction of the Government, that has not been reimbursed to U.S. Bank under the Contract and are now past due" (R4, tab 7 at 1-2). The revised claim sought \$1,575,807.04 from the DLA Susquehanna account (app. supp. R4, tab 11 at 1). The other amounts in US Bank's claim are no longer at issue. US Bank's TSYS system covered more than 1,100 DoD accounts and all of the accounts other than DLA Susquehanna were resolved and closed-out (tr. 17).

On December 15, 2020, the government requested additional information from US Bank including specific detail about the individual transactions associated with the debit adjustment of \$1,575,819.40 (R4, tab 5 at 1). On January 5, 2021, US Bank responded that it was unable to provide the requested breakdown because DFAS did not provide the information necessary to tie a particular payment to particular transaction and so US Bank applied a FIFO accounting convention (*id.* at 1-2). At DFAS' request, US Bank provided a report reflecting all debits and credits on the DLA Susquehanna account since August 1998, confirming that there was an outstanding amount due

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US Bank (app. supp. R4, tab 35, tr. 75-76). This report calculated that, since the inception of the DLA Susquehanna Account, US Bank paid \$2,272,231,467.76 and received \$2,270,670,936.33 in payments, resulting in a discrepancy of \$1,560,531.43 (tr. 45-46).

On March 19, 2021, DoD established a new policy requiring all transportation accounts to be reconciled and paid in full on an annual basis (app. supp. R4, tab 37 at 1). The policy explained that the previous TPPS contracts awarded in 1998, 2004, and 2015 lacked specific timelines for reconciling and paying outstanding bills, resulting in aged and unpaid TPPS accounts (*id.*).

On May 26, 2021, the government contracting officer issued a final decision on US Bank's March 6, 2020 claim, denying the claim for failure to provide sufficient documentation to substantiate the requested amount. (R4, tab 8 at 1-2). US Bank filed a notice of appeal dated July 20, 2021, that was docketed as ASBCA No. 62986. Because the final decision referenced only the March 6, 2020 claim, US Bank filed a protective notice of appeal from its April 1, 2020 revised claim, on a deemed denial basis. The September 1, 2021 notice of appeal from the April 1, 2020 claim was docketed on September 10, 2021, as ASBCA No. 63022, and was consolidated with ASBCA No. 62986.

On April 26, 2023, the Board granted partial summary judgment in favor of US Bank, holding that US Bank had established that it was entitled to reimbursement of the unpaid invoices on the DLA Susquehanna account, but holding that there was a factual issue regarding the exact amount because US Bank cited internally inconsistent amounts in its motion. *US Bank*, 23-1 BCA ¶ 38,346 at 186,207. The Board held a one-day hearing on September 13, 2023. At the hearing, US Bank presented evidence that one of the differing amounts in the summary judgment briefing, \$1,551,531.43, was the result of a typographical error in a declaration (tr. 44-51). Additionally, a document in the Rule 4 file cited an amount of \$1,575,807.04 (app. supp. R4, tab 39) which was the amount of an internal adjustment made by US Bank (tr. 96). This amount differs from the claimed amount of \$1,575,816.08 due to two credits in the amounts of \$9.83 and \$8.70 and an offsetting debit of \$27.57 (tr. 93-95). US Bank's claim cited a similar amount, \$1,575,819.40 (R4, tab 4 at 1; tr. 40). In addition, the record contained a calculated amount of \$1,560,531.43. US Bank explained that this was a calculation performed in response to the government's December 2020 request for high-level debit, credit, and payment data as far back as possible for the Susquehanna account (tr. 85). US Bank was unable to explain the discrepancy between these two numbers, other than to note that it was likely the result of one of the numerous adjustments made over a 20 year period (tr. 52). US Bank noted that it made over 2,700 adjustments in the last year of the contract alone (*id.*).

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DECISION

In our decision resolving US Bank's motion for summary judgment, we held that US Bank had established entitlement to the unreimbursed amounts on the DLA Susquehanna account. *US Bank*, 23-1 BCA ¶ 38,346 at 186,207. At the hearing, US Bank presented testimony that the correct amount was \$1,575,816.08 as recorded in the TSYS system (tr. 97). We are satisfied, based on the record and US Bank's explanations regarding the discrepancies in the exact amount due, that US Bank has demonstrated that the amount of the shortfall was \$1,575,816.08.

The government asserts that US Bank has not established that it is owed \$1.5 million because it never invoiced the government (gov't resp. br. at 11-18); because no amount due was carried-over into the new contract (gov't resp. br. at 18-20); and because the contracting officer reasonably denied US Bank's \$1.5 million miscellaneous debit (gov't response br. at 20-21). For the most part, these are arguments that the government should have made, but failed to make, in opposition to US Bank's motion for summary judgment (gov't resp. br. at 19 n.7 (suggesting that there "were more factual issues to be resolved than the amount" at the summary judgment stage)). Unfortunately, the government failed to raise these "issues" at the proper time. In our prior decision, we held that it was not possible to match government payments to specific transportation vouchers, and that US Bank used the FIFO accounting convention to determine which invoices had been paid. *US Bank*, 23-1 BCA ¶ 38,346 at 186,205. This holding is now law of the case (*see, e.g., Northern Helex v. United States*, 634 F.2d 557, 561 (Ct. Cl. 1980)), and is fatal to the government's arguments.

The government first argues that US Bank has not established that it is owed \$1.5 million because it never invoiced the government. According to the government, US Bank failed to invoice it for transactions in invoices dated May 18, 2002 (\$1,547,370.32); June 19, 2009 (\$4,931.23); July 17, 2009 (\$6,972); and May 10, 2010 (\$1,252.50) for a total of \$1,560,526.05 (gov't resp. br. at 14). The government does not allege that US Bank did not reimburse transportation vendors for the amounts in question, but rather that the amounts were not included on the summary invoices presented to the government. In fact, the voucher level detail presented by US Bank from the TSYS system for 3 of the 4 invoices establishes the individual transactions (over 30,000 transactions per invoice) (app. supp. R4, tab 35). In addition, US Bank tied this transaction detail to the header level detail, the total debits reported in TSYS for the billing period. Thus, by virtue of the FIFO convention, US Bank paid these transactions

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shortly after they were reimbursed. US Bank did invoice the government for the \$1,575,816.08 balance due in the “other debit” in March 2020.³

Additionally, we reject the government’s argument that the costs are not allowable, based upon the requirements of Federal Acquisition Regulation (FAR) part 31 (gov’t resp. br. at 11-12). US Bank has demonstrated that the transactions in TSYs were proper reimbursements of government-approved third-party transportation services. Moreover, FAR Part 31 applies not to US Bank’s contract for processing third party transportation payments, but to the underlying transportation services. Put more simply, if DLA Susquehanna contracts with a transportation service provider to ship something, that contract might be subject to FAR Part 31 (although many of the shipments are themselves commercial services). US Bank’s contract for payment to the transportation service provider, and reimbursement of those costs, is not subject to FAR Part 31. The contract in this appeal clearly indicates that it is a contract for commercial items (R4, tab 1 at 1).

The government is correct that the invoices that omitted the \$1.5 million were required by the contract (R4 tab 3 at 10). However, it is also true that the delinquency reports, that did include the shortfall, were also required by the contract (*id.*). If the government’s reimbursements could have been tied directly to specific invoiced amounts, the failure to include the transactions on an invoice in 2002, 2009 or 2010 would be relevant. However, here, applying the FIFO accounting convention, US Bank has not been reimbursed for the most recent \$1.5 million in properly paid for and approved transactions with transportation service providers.

The government further asserts that the Board should rely upon the Syncada data, which did not reflect a payment shortfall, rather than the TSYs data, which did reflect the \$1.5 million shortfall (gov’t resp. br. at 16). However, testimony at the hearing clearly established that TSYs was the platform of record for US Bank and that the Syncada platform was created to allow government transportation officials to approve transportation invoices from transportation service providers (tr. 28). The “reporting error” in Syncada does not make it more accurate than TSYs. The hearing testimony established that the TSYs accounts for DLA Susquehanna were internally consistent, and that 1,100 DoD accounts were resolved and closed out (tr.17).

The government’s argument that the DLA Susquehanna account had a \$0 balance at various times during the performance of the contract does not establish that there was not a \$1.5 million shortfall. According to the government, there could not be a shortfall

³ As noted above, the debit in the amount of \$1,575,819.40 is \$3.32 more than the judgment amount (*compare* R4, tab 4 at 1 *with* R4, tab 5 at 1).

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because the DLA Susquehanna account reflected a \$0 balance nine times between 2008 and 2015 (gov't resp. br. at 18-20). However, the government's argument is premised upon the government's manipulation of a spreadsheet created for this litigation using the Syncada data (gov't resp. br. at 19 n.6; tr. 90). No witness testified to this calculation. But even if a witness had so testified, the fact that the data containing the "reporting error" showed a zero balance is of no evidentiary value. The TSYS data reflect shortfalls in excess of the claim amount in each of the relevant periods (app. supp. R4, tab 18, spreadsheets dated 03 11 15, 03 30 15, and 09 DEC 15).

The government's final argument, that the contracting officer reasonably denied the \$1.5 million debit is similarly misguided (gov't resp. br. at 20-21). US Bank took the government's bait and argues that the contracting officer failed to consider all the relevant information (app. reply at 12). Both parties ignore the fact that the Board reviews contractor claims *de novo*. *Wilner v. United States*, 24 F.3d 1397, 1401 (Fed. Cir. 1994) (*en banc*). The Board may ultimately reach the same conclusion as the contracting officer; however, the contracting officer's decision receives no deference. *Id.* at 1402 ("once an action is brought following a contracting officer's decision, the parties start in court or before the board with a clean slate"). Here, we review US Bank's claim *de novo*, and sustain the appeal.

CONCLUSION

For the reasons stated above, we grant US Bank's appeal in the amount of \$1,575,816.08 plus CDA interest from the date of receipt by the contracting officer of US Bank's April 1, 2020 revised claim.

Dated: June 10, 2024



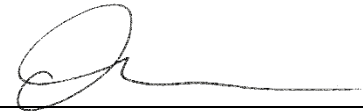
DAVID D'ALESSANDRIS
Administrative Judge
Armed Services Board
of Contract Appeals

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I concur



OWEN C. WILSON
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



MICHAEL N. O'CONNELL
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. 62986, 63022, Appeals of U.S. Bank National Association, rendered in conformance with the Board's Charter.

Dated:

PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals