



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: September 27, 2012

CBCA 2554

AIRCLAIMS, INC.,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Jonathan Macy of Airclaims, Inc., Miami, FL, counsel for Appellant.

R. Clark Miller, Office of the Solicitor, Department of the Interior, Boise, ID, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **HYATT**, and **SHERIDAN**.

HYATT, Board Judge.

Airclaims, Inc. appeals the contracting officer's denial of its claim for compensation for travel status time incurred by its employees under a firm fixed-price contract for services in connection with the pre-purchase inspection of used aircraft. The parties have submitted the case for a decision on the written record without a hearing.¹ Because the contract did not require the Government to reimburse Airclaims for the costs claimed, we deny the appeal.

¹ A telephonic oral argument was also held on May 13, 2012.

Findings of Fact

The Department of the Interior (DOI), National Business Center, Aviation Management Service (the Service) provides procurement services for the Aviation Management Directorate, which supervises all departmental functions related to aircraft and aircraft services, including acquisition, training, and safety. The Service also provides similar procurement services to other federal agencies through interagency agreements.

On August 19, 2010, the Service issued a request for proposals (RFP) for contractor-provided pre-purchase inspection services for used aircraft under consideration to be acquired by the National Nuclear Security Administration (NNSA). NNSA, a separately organized agency within the Department of Energy, is responsible for the management and security of the nation's nuclear weapons, including transport of nuclear weapons and components and special nuclear materials in support of national security needs.

Section B1.1 of the RFP, summarizing the scope of the contemplated contract, stated that “the resulting contract will be a firm fixed-price contract plus reimbursable travel expenses to conduct various stages of the pre-purchase inspection process for an indefinite quantity of Boeing 737-400 aircraft” over a period of three years. The solicitation provided that pre-purchase inspections could be required anywhere in the world. Exhibit 1.²

The solicitation included five contract line items (CLINs) that covered the various phases of the pre-purchase inspection process. The contract defined the line items associated with the pre-purchase inspection process to include “[a]ll personnel, preparation and planning, tools and equipment required to conduct the various stages of pre-purchase inspection(s) on used Boeing 737-400 aircraft.” Exhibit 11. (CLIN 0001, line item (1.1) was for the review of records and physical inspection of the aircraft and the preparation of a written report. Exhibit 1.³

Airclaims responded to the RFP on September 19, 2010, offering to perform pre-purchase inspection services under CLIN 1.1 for a fixed price of \$11,625 per inspection and adding that a separate charge would be included for necessary travel expenses, such as lodging, per diem, and local transportation incurred in performing the services. Exhibit 4.

² All exhibits are included in the appeal file.

³ The other phases included airworthiness flight evaluation, contract compliance evaluation and maintenance oversight, maintenance bridging, and a minimum guarantee that services totaling at least \$10,000 would be ordered. Exhibit 1. These phases are not relevant to the subject dispute.

On October 4, 2010, the Service issued an amendment to the solicitation requesting offerors to specify for CLIN 1.1 the number of personnel to be used for each phase of the pre-purchase inspection process and to provide a daily rate inclusive of all personnel for each day. The amendment explained that “[t]his rate may be added to awarded contracts and will allow the Government to order services by the day.” Exhibit 6.

Airclaims responded to the amendment on October 11, 2010, quoting a daily rate of \$3875 for services to be provided under CLIN 1.4. This amount provided for one surveyor and one technical records expert, “to allow the Government to order [or deduct] services by the day.” Airclaims did not change the rate it had originally quoted to perform the CLIN 1.1 fixed price pre-purchase inspection services, which it identified as including “3-4 days onsite + travel/report writing time.” Exhibit 6.

On November 2, 2010, the DOI contracting officer and other Government representatives convened a pre-award conference call with Airclaims at which the Government took notes. One of the subjects addressed in this conference concerned the CLIN 1.4 daily rate. The Service explained that it wanted the flexibility to terminate an inspection and pay a daily rate if it made an early determination not to purchase the aircraft. Exhibit 10. Later that day, the contracting officer emailed a draft contract to Airclaims which included changes based on the pre-award conference. The pricing for CLIN 1.1, however, continued to be \$11,625 per unit as described in the Airclaims offer. Exhibit 9.

On November 3, 2010, the parties executed contract number D11PD30224.

The issues in this appeal arise under CLIN 0001, which addresses the records and physical inspection stage of the pre-purchase inspection process. In relevant part, CLIN 0001 states:

CLIN 0001	Unit	Estimated Quantity	Unit Price
CLIN 1.1 Pre-Purchase Inspection - Records and Physical Inspection (Phase I) as described in your offer and Section B2	Each	12	\$ 11,625

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CLIN 1.4 *Daily Rate Phase I			
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1 Airclaims Surveyor 1 Airclaims Technical Records Specialist	Day	TBD	\$ 3875
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* Orders for services may be priced on a daily bases [sic] by phase or as negotiated. Daily rates are paid during travel days and work days.
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Exhibit 11. The pricing for CLIN 1.1 incorporates appellant's offer, which provided, in relevant part, as follows:

Duration:	3-4 days onsite + travel/report writing time
Resources:	1 Airclaims surveyor, with support from Airclaims technical records specialist
Fixed/unit price:	\$ 11,625 per aircraft

The contract also stated that Airclaims would be reimbursed for all travel expenses required to perform the work ordered under the contract in accordance with the Federal Travel Regulation (FTR). *Id.*

Within one month of contract award, respondent issued three orders for services. On November 30, 2010, DOI ordered one unit from CLIN 1.1 at the price of \$11,625 for the inspection of a Boeing 737-400 in Casablanca, Morocco. The order also authorized the payment of up to \$5000 for travel expenses authorized under the FTR and \$4044 for per diem expenses in accordance with the appropriate FTR per diem rates. Exhibit 14. A second order was placed on December 1, 2010, under CLIN 1.1 at the unit price of \$11,625, for pre-purchase inspections for Boeing 737-400 aircraft located in the Netherlands and in Roswell, New Mexico. The order authorized the payment of up to \$10,000 for travel expenses in accordance with the FTR and \$9456 for per diem expenses.

The subject dispute arose when Airclaims requested additional compensation for the six days that its employees spent traveling to and from the inspection locations at the daily rate of \$3875 prescribed in CLIN 1.4. By email message dated January 26, 2011, Airclaims submitted its final invoice for the orders DOI placed against the contract. Exhibit 24. The invoices totaled \$98,691.29.

The contracting officer initially rejected several items contained in Airclaims' invoice, most notably a charge in the amount of \$7750 for two days of time Airclaims' employees spent waiting in Morocco to inspect the aircraft at the daily rate of \$3875 and a charge for six days of travel time at the daily rate of \$3875. Exhibit 25. The contracting officer requested that Airclaims submit a new invoice to reflect the contracting officer's objections to disputed items. *Id.*

Airclaims complied with the contracting officer's request on February 25, 2011. Exhibit 29. By email message dated March 7, 2011, Airclaims explained that its offer "didn't reflect the travel costs in the 'fixed/unit price' line item and only included the aircraft inspection and report writing costs." *Id.* Airclaims then renewed its request that the contracting officer approve reimbursement for the time its employees spent traveling to and from the inspections. By email message dated March 23, 2011, the contracting officer agreed to reimburse Airclaims for the two days of "wait time" in recognition of the Service's "delay in having the aircraft ready and available for [] inspection." Exhibit 30. The contracting officer declined, however, to authorize additional payment to Airclaims for the time spent traveling to and from the inspections because the contract did not provide that DOI would reimburse Airclaims for the time its employees spent traveling under CLIN 1.1. *Id.*

On April 1, 2011, Airclaims filed a claim with the contracting officer in the amount of \$23,250 for six days of travel time under CLIN 1.1 purchase orders at the rate of \$3875 per day. On July 15, 2011, the contracting officer issued a final decision denying the claim. This appeal followed.

Discussion

The sole issue on appeal is whether CLIN 0001 of the contract requires that the Service pay Airclaims separately for the days that its employees spent traveling to and from the pre-purchase inspections ordered under CLIN 1.1. As discussed below, we conclude that it does not.⁴

⁴ The claim presented to the contracting officer was in the amount of \$23,250 for the six days of travel status time. In its complaint and brief, Airclaims seeks the amount of \$31,029.13, the amount it claims is remaining on the invoice. Respondent believes that the additional monies represent the two days of time awaiting access to records for aircraft, for which the Government has already paid appellant, and an amount for washing an employee's personal vehicle, which Airclaims agreed was not payable. In any event, since the claim as presented was for the total of six days of time in travel status at the daily rate,

Contract interpretation begins with an examination of the plain language of the contract. *LAI Services, Inc. v. Gates*, 573 F.3d 1306, 1314 (Fed. Cir. 2009) (citing *M.A. Mortenson Co. v. Brownlee*, 363 F.3d 1203, 1206 (Fed. Cir. 2004)). The contract must be read as a whole, giving reasonable meaning to all its parts. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991). If the plain language of the contract is unambiguous on its face, the inquiry ends, and the contract's plain language controls. *Hunt Construction Group., Inc. v. United States*, 281 F.3d 1369, 1373 (Fed. Cir. 2002). But if the contractual language at issue is susceptible of more than one reasonable interpretation, it is ambiguous, and it is the Board's task to determine which party's interpretation should prevail. *Gildersleeve Electric, Inc., v. General Services Administration*, GSBCA 16404, 06-2 BCA ¶ 33,320, at 165,210.

Airclaims maintains that it is entitled to additional reimbursement from DOI because the contract states, "Airclaims will be paid for [its] services which include travel fees and expenses." DOI counters that the contract, construed as a whole, does not provide for separate reimbursement of the travel time of appellant's employees under an order issued pursuant to CLIN 1.1. Rather, the relevant language of the contract obligates the Service only: (1) to pay \$11,625 per unit ordered from CLIN 1.1; and (2) to reimburse Airclaims for travel and per diem expenses pursuant to the FTR. A review of the contract language and the assertions of Airclaims simply does not support its interpretation. The contract language is not ambiguous and Airclaims' alternative interpretation is not reasonable.

CLIN 1.1 of the contract provides that orders for Airclaims' Phase I services "as described in [Airclaims'] offer" are to be paid at the fixed unit price of \$11,625. The very terms of Airclaims' offer lead to the conclusion that Airclaims had calculated travel time into its proposed fixed unit price of \$11,625. The Airclaims proposal, which was incorporated into the written contract, stated that Airclaims would require "3-4 days onsite" for its employees to complete the inspection process and would spend additional time for "travel/report writing." Based upon this statement, Airclaims offered to perform CLIN 1.1 services for the unit price of \$11,625. The language of the proposal as incorporated into the contract and which includes travel and report writing time, leads to the conclusion that Airclaims' expected costs of performing these services, including compensation for time spent by employees in travel status, were calculated into its proposed fixed unit price of \$11,625.

Further, the contract explicitly provided that Airclaims is to be reimbursed for all travel expenses in accordance with the FTR. CLIN 1.1, therefore, distinguished the costs

totaling \$23,250, that is the only claim which the Board may consider.

of performing the contract, which include employees' time on travel status, from the direct costs of travel, such as the cost of transportation, lodging, and per diem.

Finally, Airclaims' reliance on CLIN 1.4 to support its claim to recover the daily travel rate to compensate for its employees' time spent in travel status is not supported by the plain terms of the contract and the correspondence generated on this subject. No provision of the contract requires DOI to reimburse Airclaims separately for time its employees spent traveling under CLIN 1.1. Although CLIN 1.4 provides for a daily rate to be paid for Phase I services under CLIN 0001, that rate applies only when the Service issues an order for CLIN 1.4 services. The dispute at issue here arose under respondent's order for CLIN 1.1 services.

Airclaims asserts that the Service "unilaterally decided, long after the contract was executed and services were rendered, that they were not going to pay Airclaims for their work." The record, however, shows that the Service has satisfied its contractual obligation to pay Airclaims for the services rendered and for its employees' travel expenses in accordance with the FTR. Moreover, when the Service determined that it had caused a delay in the inspection process due to the failure to make the aircraft records available for inspection in a timely manner, it reimbursed Airclaims for the waiting time incurred by its employees. The Service's actions over the course of contract performance have been consistent with the plain language of the contract.

This is one of those cases where the language is plain and the contractor has not shown any ambiguity that supports its proposed interpretation of the contract. Under a firm fixed-price contract, the contractor bears the risk that the price it charges the Government is sufficient to cover all costs of performance. *See, e.g., Dalton v. Cessna Aircraft Co.*, 98 F.3d 1298, 1305 (Fed. Cir. 1996); *IAP World Services, Inc. v. Department of the Treasury*, CBCA 2633 (Aug. 13, 2012). That Airclaims inaccurately estimated or failed to include in its price, the time its employees would spend traveling to the aircraft to be inspected is not an oversight for which either the law or the contract affords relief.

Decision

For the foregoing reasons, the appeal is **DENIED**.

CATHERINE B. HYATT
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

PATRICIA J. SHERIDAN
Board Judge

