



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: September 2, 2011

CBCA 2325

WIRELESS AND GIFTS,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Salah U. Zubair of Wireless and Gifts, Jackson Heights, NY, appearing for Appellant.

Gabriel N. Steinberg, Office of Regional Counsel, General Services Administration, Atlanta, GA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **STERN**, and **GOODMAN**.

GOODMAN, Board Judge.

Appellant purchased a dump truck at a General Services Administration (GSA) auction. Appeal File, Exhibit 7. He did not retrieve the truck after being advised that he was the successful bidder. GSA issued a notice of default, assessed \$200 liquidated damages for failure to retrieve the truck, and returned the balance of the purchase price to appellant. Appeal File, Exhibit 21. Appellant submitted a claim requesting that the truck be sent to him at government expense and demanding \$2000 in travel expenses allegedly incurred in traveling from New York to South Carolina to have the truck, which was inoperable, towed to New York. Appeal File, Exhibit 14. The contracting officer issued a final decision denying the claim and appellant appealed. Appeal File, Exhibit 22.

The parties agreed to have the appeal decided on the written record. Both parties have filed record submissions and reply submissions.

Discussion

Appellant alleges he traveled to South Carolina from New York to pick up the truck, but the government officials did not make themselves available to allow him into the facility. Appellant's Record Submission. The government officials, through sworn statements, vigorously deny their unavailability, stating they were available at the time in which appellant allegedly had traveled there.

We determine, based upon review of the parties' submissions, that the facility was open during business hours for appellant to retrieve the truck. While appellant asserts that he was told that the facility was closed, sworn statements of the government personnel at the facility contradict appellant's assertions. One individual states that he was authorized overtime to wait for appellant on the day appellant stated he would arrive, but appellant did not appear.

The notice of default was properly issued, based upon the terms of the auction. Appeal File, Exhibit 1. Respondent has complied with its obligations by tendering the purchase price less liquidated damages. The terms of the auction require a purchaser to remove any property on which he is the successful bidder and do not require GSA to deliver goods to the successful bidder. Appeal File, Exhibit 2 at 2. Additionally, the terms of the auction do not allow recovery of travel expenses. *Id.*

Decision

The appeal is **DENIED**.

ALLAN H. GOODMAN
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

JAMES L. STERN
Board Judge