



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: September 24, 2010

CBCA 859

HOMESOURCE REAL ESTATE ASSET SERVICES, INC.,

Appellant,

v.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Respondent.

James S. DelSordo of Angus Legal, LLC, Manassas, VA, counsel for Appellant.

Richard A. Marchese and John R. Lego, Office of Regional Counsel, Department of Housing and Urban Development, Philadelphia, PA, counsel for Respondent.

Before Board Judges **GILMORE**, **BORWICK**, and **DRUMMOND**.

**DRUMMOND**, Board Judge.

This is an appeal from a Department of Housing and Urban Development (HUD) contracting officer's (CO) final decision denying the certified claim of HomeSource Real Estate Asset Services, Inc. (HomeSource) seeking an equitable adjustment under a contract for marketing and management (M&M) services. HomeSource seeks \$196,521.25 for unpaid marketing fees, \$106,000 for increased performance costs as a result of implementation of modification 10, and \$136,893.41 for unpaid marketing bonuses and incentive payments. HUD has moved for summary relief. HUD maintains that HomeSource has failed to show that it is entitled to the requested relief. HUD further maintains that a release precludes HomeSource's claims for unpaid marketing fees and incentive payments. HomeSource opposes the Government's motion.

For the reasons stated below, we grant the Government's motion for summary relief and consequently deny HomeSource's appeal.<sup>1</sup>

### Background<sup>2</sup>

In 1999, HUD issued solicitation R-OPC-22505 for single family M&M services. Appeal File, Exhibit 2.1 at 1; Respondent's Statement of Uncontested Facts (RSUF) ¶ 6; Appellant's Statement of Genuine Issues (ASGI) ¶ 6. The services included monitoring mortgagee compliance, marketing and managing single family properties owned by or in the custody of HUD (HUD properties), and overseeing the sales closing activities. *Id.*

On October 14, 2004, HUD awarded to HomeSource contract C-PHI-00909 (contract) to provide M&M services for HUD properties located in Maryland and Washington, D.C. Appeal File, Exhibit 2.1 at 1; RSUF ¶ 7; ASGI ¶ 7. The contract term was one base year and four optional years. Appeal File, Exhibits 2.1, 2.5. Under the terms of the contract, HUD agreed to assign 900 properties to HomeSource for M&M services per year. *Id.*, Exhibit 2.1 at 2. The contract incorporated by reference Federal Acquisition Regulation (FAR) clauses FAR 52.216.22, Indefinite Quantity (Oct. 1995); FAR 52.233-1, Disputes (Dec. 1998); and FAR 52.243-1, Changes-Fixed Price (Alternate I) (Apr. 1994). *Id.* at 2, 114.

Section B.6 of the contract identified the specific types of services and assigned a contract line item number (CLIN) to each. Appeal File, Exhibit 2.1 at 4. This section states:

As full compensation for the services required under this contract the Contractor shall be paid the fixed-unit-rate . . . for each CLIN; unless otherwise specifically identified as an incentive fee or a pass-through expense . . . . The Contractor is entitled to and shall be paid the management and marketing incentive fees, but only if they are earned . . . .

*Id.*

CLIN 0003, entitled "Marketing Fee," states, *inter alia*, that:

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<sup>1</sup> The record includes the appeal file, the Government's motion with a declaration by Anna Papili, a Branch Chief responsible for this contract, the Government's reply to HomeSource's opposition, and various exhibits. It also includes HomeSource's opposition with an affidavit by Deborah Caruso, a vice president at HomeSource, and various exhibits.

<sup>2</sup> The Board considers these facts to be undisputed.

The Contractor shall be paid a fixed percentage of the net offer amount for each property as it is defined in the PWS (Performance Work Statement) for all the requirements of Section C -5.4. The fee shall be invoiced in the month the property reconciles. The marketing percentage and calculation will be the same for all sales including discounted sales, \$1 Home sales and vacant lots with the exception that for properties sold under the Asset Control Area Program . . . .

Appeal File, Exhibit 2.1 at 6. As used in this contract, “reconciles” refers to an accounting procedure which occurs following a property sale and closing. *Id.* at 76, 77. The marketing percentage was 2.5% for the base contract year. *Id.* at 4; RSUF ¶ 19; ASGI ¶ 19.

Bilateral modification 6, effective on November 1, 2005, and made pursuant to the Changes clause, reduced the minimum quantity and created a tiered pricing structure which provides for explicit fee values based on the number of properties assigned during the first option year, November 1, 2005, through October 31, 2006. Appeal File, Exhibit 2.7 at 1, 3. This modification increased the contract value for the base period and first option year by \$3,599,014 and states, *inter alia*, that:

In consideration for reducing the minimum quantity provision of the contract for option periods, the parties mutually agree . . . to change the minimum quantity for Years 2, 3, 4, and 5 from 900 to 400 . . . .

Beginning with Option Year 1, a tiered pricing structure is established. For the first 550 property assignments of each option year, the Contractor shall be paid the fixed unit prices stated in Tier 1 for the applicable option year. For property assignments 551-900, the Contractor shall be paid the fixed unit prices stated in Tier 2 of the applicable option year. Beginning with the 901st property assignment and continuing for all remaining property assignments in each option year, the Contractor shall be paid the fixed unit prices stated in Tier 3 for the applicable option year.

*Id.* at 6; RSUF ¶ 21; ASGI ¶ 21. Modification 6, which did not reserve any rights to HomeSource, also contains the following release:

In consideration of the modification agreed to herein as a complete equitable adjustment . . . Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the proposal for adjustment.

Appeal File, Exhibit 2.7 at 3.

Modification 9, signed by HomeSource on October 23, 2006, and the CO on October 31, 2006, was issued for the same reasons as modification 6. Appeal File, Exhibit 2.10 at 1, 3, 5, 6. This modification was effective for option year 2, November 1, 2006, through October 31, 2007, and increased the total contract amount by \$3,364,084. *Id.* In brief, this modification increased the marketing percentage for Tier 1 properties assigned in option year 2 from 2.5% to 4%. *Id.* The marketing percentage for Tier 2 and 3 property assignments, however, remained 2.5% of the net offer amount. *Id.* This modification also made clear that the date a property settles has no impact on the marketing fee rate applicable to that given property. *Id.*

Modification 9, which did not reserve any rights to HomeSource, also contains the following release:

In consideration of the modification agreed to herein as complete equitable adjustment for the Contractor's . . . proposal for settlement due to HUD's not meeting the option year 1 minimum requirements, the Contractor hereby releases the Government from any and all liabilities under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the proposal for adjustment. The Government and Contractor mutually agree to a one-time lump sum settlement payment in the amount of \$250,000 for HUD's not meeting option year 1 minimum requirements.

Appeal File, Exhibit 2.10 at 3.

On January 18, 2007, the CO wrote to HomeSource confirming that "all marketing fees shall be calculated based upon the rate in effect at the time of property assignment." Appeal File, Exhibit 3.15 at 3. There is no evidence that HomeSource responded to this letter or otherwise questioned the CO's interpretation.

By letter dated May 5, 2007, HomeSource transmitted a certified claim to the CO seeking, *inter alia*, an equitable adjustment for "unpaid marketing fees." Appeal File, Exhibit 3.17. HomeSource asserted that it was entitled to \$171,615.34. *Id.* HomeSource maintained that the language in CLIN 0003 which states "[t]he fee shall be invoiced in the month property reconciles" is evidence that marketing fees are paid based on the sale date. *Id.* HomeSource claimed that it was entitled to a 4% marketing fee on certain properties sold from November 2006 to March 2007. *Id.* at 4. HomeSource identified these properties by sale dates. *Id.* at 15.

By a decision dated June 26, 2007, the CO denied this claim, stating that HomeSource's claim lacked merit as marketing fees were always paid based on the date of property acquisition. The CO stated that she "repeatedly informed HomeSource that HUD's payment of M&M fees is based upon the date a property is acquired and not based on the date a property is sold." The CO observed that HomeSource had misinterpreted the contract. The CO stated that the language in CLIN 0003 did not speak to the applicable marketing fee rate. According to the CO, this language merely instructs HomeSource to prepare a bill during the month the property reconciles. The CO noted that during the first and second option years, HomeSource had accepted payment of marketing fees from HUD based on the date of property acquisition, not the date of sale. The CO observed that modification 9 clearly states that the marketing fee is based on the number of assignments in that option year rather than the number of closings. The CO also stated that HomeSource, by signing modification 9, had explicitly agreed to waive all claims in consideration for the negotiated marketing adjustment. Appeal File, Exhibit 1.1 at 4, 5.

On appeal, HomeSource increased the claim amount to \$196,521.25. Appellant's Opposition to Respondent's Motion for Summary Relief (Appellant's Opposition) at 3.

#### Unpaid Marketing Fees

HomeSource contends that HUD misinterpreted modification 9 and it is owed \$196,521.25 for additional marketing fees through September 2008. Appellant's Opposition at 3. The Government has moved for summary relief. Summary relief is appropriate when the moving party is entitled to judgment as a matter of law, based on undisputed material facts. The moving party bears the burden of demonstrating the absence of genuine issues of material fact. All justiciable inferences must be drawn in favor of the non-movant. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

Pure contract interpretation is a question of law that may be resolved on summary relief. *P.J. Maffei Building Wrecking Corp. v. United States*, 732 F.2d 913, 916 (Fed. Cir. 1984). The parties are in agreement that there are no genuine issues of material fact for trial. Their differences are confined to the law and its application to the contract in this appeal; therefore, summary relief as to entitlement is appropriate in this case.

In interpreting the language of a contract, reasonable meaning must be given all parts of the agreement so as not to render any portion meaningless. *McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1434-35 (Fed. Cir. 1996). An interpretation that gives a reasonable meaning to all parts will be preferred to one which leaves a portion of the contract

meaningless. *Alliant Techsystems, Inc. v. United States*, 178 F.3d 1260 (Fed. Cir. 1999); *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991). Additionally, contract language should be given the plain meaning that would be derived by a reasonably intelligent person acquainted with the contemporaneous circumstances. *McAbee Construction*, 97 F.3d at 1435.

In opposing the Government's motion, HomeSource alleges that the marketing fee rate is set at the time the property settles. As support, HomeSource refers to the language in CLIN 0003 which states that a marketing "fee shall be invoiced in the month the property reconciles." As further support, HomeSource notes that after November 1, 2006, HUD occasionally paid fees at 2.5% and some at 4%. HomeSource maintains that HUD was confused as to the applicable market fee. Appellant's Opposition at 3. HomeSource also submitted documents dated November 1, 2006, and later which show that the Government paid some fees at the rate of 2.5% and some at the 4% rate based on the date the property was acquired. *Id.*, Exhibit 3.

The Government, while relying on the language in modification 9, argues that HomeSource's claim fails because the contract as amended clearly states the marketing fee is dependent on the date of property acquisition. The Government alleges that the record demonstrates that marketing percentage fees were always paid based on the time property was acquired. Alternatively, the Government argues that HomeSource waived its rights to pursue this claim.

The language in CLIN 0003 simply instructs HomeSource to prepare a bill during the month the property reconciles and does not address the marketing fee rate. The contract, as amended, called for marketing fees to be dependent on the date of property acquisition. Modification 9 made clear that the date of settlement has no impact on the marketing fee for a particular property. Reading the contract as a whole, according a reasonable meaning to all terms, and assuming that no contract provision is made inconsistent, superfluous, or redundant, we find HomeSource's interpretation unreasonable.

As a secondary matter, this claim fails for another reason. We construe the releases signed by HomeSource as inclusive of all marketing fees, which, in the absence of contrary evidence was a foreseeable element of cost. There was no reservation of rights associated with modification 9. It is well settled that a contractor who executes an unconditional release is barred from any additional compensation under the contract based on events occurring prior to the execution of the release. *Northwest Marine, Inc.*, ASBCA 40505, 94-3 BCA ¶ 27,036. HomeSource did not address the release issue and the record does not establish that HomeSource reserved its rights associated with this claim. We find that this claim is barred

by the release in modification 9, and grant HUD's motion for summary relief with regard to this claim.

### Additional Background

The contract stated that HomeSource "shall assist HUD in the disposition of properties through a variety of discount sales programs that support HUD's mission of preserving communities and promoting affordable housing." Appeal File, Exhibit 2.1 at 66, 67; RSUF ¶ 23. One such method of disposal was the Officer/Teacher Next Door (OND/TND) program. *Id.* Specifically, contract section C.5.4.2.2.1 states:

The Contractor shall offer single-unit properties located in the Revitalization Areas to eligible purchasers under the OND/TND programs at a fifty (50) percent discount off the list price. Eligible purchasers under the OND/TND programs include (i) full time law enforcement officers (ii) full time teachers, (iii) qualified nonprofit organizations and governmental entities . . . .

Appeal File, Exhibit 2.1 at 67. The contract provides that from "time to time, HUD may amend, add, or discontinue use of some discount sales programs." *Id.* at 66.

During performance, the parties agreed to modify the OND/TND program several times. Bilateral modification 7, effective December 28, 2005, made pursuant to the Changes clause, at no additional cost, altered the OND/TND program to include fire fighters and emergency medical technicians as eligible purchasers. Appeal File, Exhibit 2.8 at 1.

This modification also included the following:

Adequate consideration for the issuance of this modification is provided as both HUD and the contractor have agreed to changes that will stream line [sic] the business processes of both . . . [HUD and HomeSource] as well as providing both financial benefit and detriment.

Appeal File, Exhibit 2.1 at 1.

Modification 10 to the contract, effective January 3, 2007, and made pursuant to the Changes clause, at no additional cost, renamed the OND/TND program the Good Neighbor Next Door (GNND) program. Appeal File, Exhibit 2.11 at 1, 69. This modification also altered the contract language relating to section C.5.4.2.2.3.2, "Selection of Winning Bidder," and stated:

At the end of the five (5) day Lottery Period, . . . [HomeSource] shall select by random drawing of lots, one winning Offeror and, if there are sufficient bids, at least one back up Offeror and, in the case of GNND, two back up Offerors, as follows . . . .

*Id.* at 69. According to the CO, the effect of this change was that if more than one offer was submitted under the lottery process, HomeSource would be required to maintain at least two offers as backups should the winning bidder fail to complete the transaction. *Id.*, Exhibit 4.26. The CO also represented that HUD staff evaluated this modification and concluded that it would not increase HomeSource's performance costs. *Id.*

HomeSource subsequently requested, *inter alia*, an equitable adjustment totaling \$319,200 for increased costs associated with modification 10, including \$26,000 for "additional home office and overhead effort." Appeal File, Exhibit 3.13 at 3, 4. HomeSource asserted that it was entitled to the claimed amount because:

- [it] receives an average of 25 listings per month x 12 = 300 per year
- Of those 300, 70% are . . . (revitalization areas) which is 210 . . . per year
- Of the 210 . . . 50% of them would normally fall out; however, under the terms of the modification now there will be no fall outs
- Our average sales price is 120% of the average appraised value. On Direct Sales we only receive 100% of the appraised value which leaves us with a 20% deficit in billable marketing fees
- By selling 105 properties at 20% less than the normal average sales price, the loss to us per year is \$80,400 in billable
- Additional home office and overhead effort = \$26,000
- \$106,400 x 3 years = \$319,200

*Id.* HomeSource offered no proof, such as overhead expenses, labor expenses, and business records, to support the reasonableness of these estimates.

By letter dated June 26, 2007, the CO denied this claim, stating that:



We have researched your basis for this request and find it lacks merit and is based on incorrect information . . . .

Although 70% of the properties acquired in the contract area are located in revitalization areas, only 20-30% of those properties were sold at a discount. Just because a property is located in a revitalization area does not mean that it will sell for a discount.

As shown in the spreadsheet, the percentage of GNND (OND/TND) sales as a percentage of total sales was 19% for 2005, 10% for 2006 and 10% for 2007 (year to date). Furthermore, the percentage of . . . sales and other discounted sales to non-profit organizations range from 7-10%.

HomeSource is correct in its assertion that the average sales price on a non-discounted sale exceeds the average sales price of a discounted sale. However, you are not penalized for the discounted sale as your fee is based on 100% of the appraised value and not the discounted price. HUD's data reveals that the average sales price as a percentage of appraised value on a property sold without a discount is not 120%, but ranges between 89-113%. And the average sales price as a percentage of appraised value is higher for a property located in a revitalization area than for properties that are not located in a revitalization area.

Your REA [request for equitable adjustment], as submitted, lacks merit as the percentage of discounted sales, particularly GNND type sales, is small and the projection provided by your firm is incorrect.

Appeal File, Exhibit 1.1 at 1-3. The CO reasoned that HomeSource's claim was based on "faulty logic and faulty figures," and lacked documentary support. *Id.*

On appeal, HomeSource reduced this claim. Appellant's Opposition at 6. HomeSource has estimated that modification 10 increased its costs of performance in the amount of \$109,375 for two of the three remaining years of the contract based on 2006 figures. ASUF ¶ 8; Affidavit of Deborah Caruso (June 25, 2009) ¶¶ 9, 10. HomeSource's

estimate includes \$52,000 for home office overhead. *Id.*<sup>3</sup> HomeSource does not address how modification 10 caused it to increase its workforce or perform the contract in a manner different from that anticipated at the time of preparing its bid. The record does not include HomeSource's actual cost records for 2006 or other hard numbers to document the estimated damages.

### Increased Costs

HomeSource alleges that modification 10 increased its cost of performance; it claims entitlement to relief under the Changes clause. Complaint ¶ 7.b. HomeSource asserts that modification 10 required it to increase its workforce and perform work in a manner different from the one it anticipated. *Id.* ¶ 15. The Government asserts that HomeSource, as the party requesting the equitable adjustment, has the burden of establishing a causal connection between modification 10 and the alleged increased cost of performance. HUD maintains that HomeSource has failed to provide any factual support to establish either entitlement or quantum in this appeal and summary relief is appropriate. Respondent's Motion for Summary Relief (Respondent's Motion) at 9. The Government further maintains that HomeSource's estimated increased costs are based on incorrect information and lack adequate factual support. The Government asserts that HomeSource has failed to show its actual costs to perform modification 10 or otherwise support its estimates, even after discovery.

HomeSource, in its response to the Government's motion, simply reiterates its argument as to entitlement; it does not address the Government's assertion that its claim is based on incorrect and unsupported estimates. HomeSource has offered no other proof, such as payroll and financial records, documenting the alleged damages. HomeSource did not address its planned versus actual costs to perform this work; nor did it explain how it computed the home office overhead claim. Conclusory allegations and attorney arguments are insufficient to overcome a motion for summary relief. *Celotex Corp.*, 477 U.S. at 322-23. The affidavit by Ms. Caruso repeats the argument by counsel and does not suffice to defend the motion, either. As the Supreme Court has explained, summary relief must be entered, "after adequate time for discovery and upon motion" - - both of which are present here - -

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<sup>3</sup> HomeSource asserts that it is willing to "forgo its damages associated with this claim except the added actual employee expense (associated with additional work performed by . . . Stellar Carver, which is \$78,000 for the three years (\$26,000 per year))." ASUF ¶ 53. A single pay stub for Ms. Carver was attached to HomeSource's submission. HomeSource has offered no other proof, such as annual pay records, documenting Ms. Carver's yearly salary.

against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.

*Celotex Corp.*, 477 U.S. at 322-23. To receive an equitable adjustment from the Government, a contractor must show resultant injury, as well as liability and causation. *Servidone Construction Corp. v. United States*, 931 F.2d 860, 861 (Fed. Cir. 1991). HomeSource has failed to make the requisite showing that it can establish these three matters. By failing to address the Government's point that the claim is based on estimates which are illogical and faulty, and failing to offer justification for its estimated damages, HomeSource has not met its burden of showing a rational way of determining the value of whatever injury may have resulted from this modification. See *P&C Placement Services, Inc. v. Social Security Administration*, CBCA 391, 07-1 BCA ¶ 33,492. We grant HUD's motion as to this claim.

#### Additional Background

Section B.9 sets forth the property management performance requirements. A contractor who performs significantly above the minimum key performance measures may earn incentive payments. Appeal File, Exhibit 2.1 at 8. The incentive payments are based on HomeSource's quarterly average Special Property Inspection (SPI) score. *Id.* According to the contract, an SPI is a quality inspection of HUD properties performed by HUD inspectors. *Id.* at 24. If HomeSource received a SPI score of 90-94 for performance during a given quarter, it was entitled to an additional incentive payment of 3% of the total property management fee during that quarter. *Id.* at 8. If it received a quarterly SPI score of 95-100, it was entitled to an additional incentive payment of 5% of the property management fee during that quarter. *Id.*

Bilateral modification 5, effective August 1, 2005, altered how to compute the incentive payments, so as to read that incentive payments are based on HomeSource's SPI score and "quarterly minimum satisfactory rating (MSR) . . ." Appeal File, Exhibit 2.6. The same score standards of 90-94 for 3% incentive and 95-100 for 5% incentive were still applicable. *Id.* This modification also contained the following release:

Contractor's Statement of Release: In consideration of the modification agreed to herein as complete equitable adjustment for this change order, the Contractor hereby releases the Government from any and all liability under this

contract for further equitable adjustments attributable to such facts or circumstances giving rise to the settlement of this change order.

*Id.*

Bilateral modification 13, executed by HomeSource on April 30, 2007, and HUD on May 1, 2007, but effective August 1, 2005, stated:

a. Paragraphs 1 and 2 of Modification No. 0005 (which added Global Modification No. 3 to the contract) are hereby rescinded in their entirety effective August 1, 2005. Accordingly, incentives that were earned but not paid yet using the original incentives language . . . will be paid by HUD upon the contractor's presentation of an acceptable and proper invoice.

Appeal File, Exhibit 2.14; RSUF ¶ 49.

By letter dated May 8, 2007, HomeSource wrote to the CO, stating, "I am writing to you concerning HomeSource's increased costs arising from . . . what we have termed overzealous inspections." Appeal File, Exhibit 3.17a. The letter also stated that "HomeSource has been set up for a fall based on the Government's failure to properly adjust for all SPI disputes and properly scrub . . . (HomeSource's) inventory in calculating DOM (days on the market)." *Id.* HomeSource claimed it was entitled to \$288,122.04. *Id.*

On June 26, 2007, the CO issued a final decision denying this claim. Appeal File, Exhibit 1.1. The letter stated that modification 13 settled the payment of all incentive payments earned but not yet paid. The CO stated that HomeSource had acknowledged this fact in its letter dated May 8, 2007. *Id.* The CO also stated that when HomeSource had raised concerns regarding DOM with respect to specific properties and brought those properties to HUD's attention with proper documentation, HUD removed the properties from its calculation of HomeSource's DOM. *Id.* The CO stated that HomeSource had presented no evidence that demonstrates it is entitled to any unpaid marketing bonuses or identified any properties at issue, much less the mathematical calculations supporting its claims. *Id.*

On appeal, HomeSource amended this claim amount to \$136,893.41. Complaint ¶ 7. There are no facts in the record which demonstrate the number of properties affected by the Government's supposed failure, calculations as to the number of days the properties remained in inventory, or calculations which demonstrate the costs to HomeSource.

Unpaid Marketing Bonuses and Property Management Incentive Payments

HomeSource asserts that it is owed unpaid marketing bonuses and property management incentive payments. Complaint ¶ 7; Appellant's Opposition at 6.

The Government maintains that HomeSource's contentions are without merit. The Government argues that as a result of modification 13, HomeSource was retroactively paid all earned incentive payments from August 1, 2005, through May 1, 2007. Respondent's Motion at 11; Appeal File, Exhibit 4.26. The Government states further that HomeSource conceded this fact in a letter dated May 8, 2007. Appeal File, Exhibit 3.19 at 6; Respondent's Motion at 11. It also maintains that HomeSource has failed to demonstrate that it is owed any unpaid marketing bonuses. The Government states that it requested on numerous occasions the specific factual details for this claim but has received nothing.

HomeSource, in an affidavit by Ms. Caruso and its response to the Government's motion, simply reiterates its argument as to entitlement; it does not address the Government's assertions concerning the property management incentive payments and marketing bonuses.

Concerning the claim for property management incentive payments and unpaid marketing bonuses, HomeSource has failed to make the requisite showing that it can establish any of the three matters we identified as essential to proving its claim - - liability, causation, and resultant injury. By failing to offer justification for its damages, HomeSource has not met its burden of showing a rational way of determining the value of whatever injury may have resulted the Government's actions. *Ferring B.V. v. Barr Laboratories, Inc.* 437 F.3d 1181, 1193 (Fed. Cir. 2006). We grant HUD's motion as to this claim.

Decision

We grant the Government's motion for summary relief on all three counts. This appeal is **DENIED**.

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JEROME M. DRUMMOND  
Board Judge

We concur:

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BERYL S. GILMORE  
Board Judge

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ANTHONY S. BORWICK  
Board Judge