



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: September 29, 2015

CBCA 4845

G2G, LLC,<sup>1</sup>

Appellant,

v.

DEPARTMENT OF COMMERCE,

Respondent.

Darren Rittenhouse, Sole Member of G2G, LLC, Gainesville, VA, appearing for Appellant.

Lisa J. Obayashi and Heidi Bourgeois, Office of the General Counsel, United States Patent and Trademark Office, Department of Commerce, Alexandria, VA, counsel for Respondent.

Before **DANIELS**, Board Judge (Chairman).

G2G, LLC (G2G) claims that it is entitled to \$14,813.97 for work it performed at the conclusion of its contract with the Department of Commerce's Patent and Trade Office (PTO). According to the contractor, this work was additional to the work it was required to perform under the contract.

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<sup>1</sup> Documents in the record of this case refer to the appellant variously as "G2G, LLC" and "Good to Go, LLC." The appellant has informed us that its legal name is G2G, LLC.

G2G elected to have this case considered under the Board's small claims procedure. Board Rule 52 (48 CFR 6101.52 (2014)); *see* 41 U.S.C. § 7106(b) (2012). Consequently, this decision is being rendered by a single judge. The decision is final and conclusive; it may not be set aside except for reason of fraud and has no value as precedent. *Id.*; *Mitchell Enterprises, Inc. v. General Services Administration*, 03-2 BCA ¶ 32,403, at 160,354 (citing *Palmer v. Barram*, 184 F.3d 1373 (Fed. Cir. 1999)). At the request of the parties, the case is being decided on the basis of the written record. Board Rule 19(a).

We deny the appeal.

### Findings of Fact

The PTO awarded contract number DOC50PAPT0901028 (the 2009 contract) to G2G on September 30, 2009. The contract provides that in exchange for a fixed price, G2G was to "provide the [PTO] . . . with . . . general storage and delivery of forms, publications, other paper products, and miscellaneous items." The contractor was to maintain an inventory of PTO items in its warehouse "in an organized and orderly fashion to facilitate timely inventory retrieval and restocking," and, upon request, to deliver items to any of various PTO facilities. The base period of the contract was October 1, 2009, to September 30, 2010; the contract could be extended at the PTO's discretion for four option periods of one year each.

The PTO exercised its discretion to extend the contract through option year 1 (October 1, 2010, through September 30, 2011) and option year 2 (October 1, 2011, through September 30, 2012). The agency chose not to extend the contract further, however. On September 11, 2012, it informed G2G that it would send tractor-trailers to the contractor's facilities to load PTO inventory that remained in the warehouse.

G2G responded that it "cannot give representatives nor [PTO] employees access to the inside of the warehouse during the move." G2G's personnel moved all the items to a location just outside the warehouse, and another PTO contractor picked them up there. The transfer was completed by September 28, 2012. By invoice dated September 30, 2012, G2G sent to the PTO its bill for storage and warehousing service during the month of September. The amount of the invoice was G2G's standard monthly billing amount under the contract. The PTO paid this amount.

The parties had no further contact until August 29, 2014, when the PTO sent to G2G various forms and certifications "[t]o facilitate formal closeout procedural requirements" regarding the 2009 contract. In response, on September 17, 2014, G2G sent to the PTO a invoice under this contract for "Exit of Storage" in the amount of \$20,406. G2G noted that both the 2009 contract and a predecessor contract which had been awarded in 2005 for the

same types of services contained a clause entitled “Transfer General Storage From Current Facility.” This clause required the contractor to “transfer an estimated 850 skids of forms, publications, and miscellaneous items from the [PTO] current storage facility to contractor’s facility.” G2G maintained that although “[t]he [clause] was not revised to require the close-out/move-out related services,” the contractor’s costs of removing PTO inventory from its warehouse should be reimbursed by the agency. On January 22, 2015, a PTO contracting officer denied recovery, asserting that “the final movement of [PTO] materials from G2G’s facility was required and within the scope of work and that G2G included the costs associated with both on-boarding as well as ‘exit’ services as part of its firm fixed price for which it has already been fully compensated.”

On January 24, 2015, G2G submitted to the PTO a claim in the amount of \$20,616, contending that the contractor’s billings and the agency’s payments under the 2009 contract had been this much less than the contract amount. On February 10, 2015, the agency acknowledged that there was a remaining balance of \$20,400 under the contract and promised to pay that amount once the contractor had submitted an invoice. The PTO asserts that it did pay the amount. This matter is not at issue in this case.

On February 2, 2015, G2G submitted a second claim for exit fees, this one calculated in a different way and in the amount of \$14,813.97. By decision dated April 14, 2015, the PTO contracting officer denied this claim. On July 6, 2015, G2G appealed this decision to the Board.

### Discussion

G2G maintains that the PTO’s direction to remove items from the warehouse at the conclusion of the contract period was a constructive change to the contract, and that the PTO must pay for the costs associated with the change. The PTO posits two arguments in opposition: first, the exit services performed by G2G were within the scope of the contract, so a constructive change never occurred; and second, the claim was made too late to be considered, since claims made pursuant to the Federal Acquisition Regulation’s changes clause, 48 CFR 52.243-1, must be made “within 30 days from the date of receipt of the written order.”

We agree with the PTO that whatever services G2G performed in removing items from the warehouse were encompassed within the contract’s requirements. The contract mandated that G2G was to remove items from the warehouse at the PTO’s request and deliver them to any of various PTO facilities. The agency actually directed the contractor to perform a lesser task at the conclusion of the contract: simply permit agency representatives to enter the warehouse to remove agency-owned inventory. G2G, for its own reasons, chose

to take a greater role in the removal: it would place the items outside the warehouse, where another contractor would pick them up. Even with this level of involvement, the contractor performed an easier task than it would have if the agency had exercised its contractual right to have the items delivered to agency facilities, for no transportation services were necessitated.

As we have explained:

A constructive change occurs where a contractor performs work beyond the contract requirements without a formal order, either by an informal order or due to the fault of the Government. To recover on its constructive change claim, a contractor must prove that the government ordered it to perform additional work and that this work was not required under the contract.

*IAP World Services, Inc. v. Department of the Treasury*, CBCA 2633, 12-2 BCA ¶ 35,119, at 172,444-45 (quotations and citations omitted). Because the exit services that G2G provided were not beyond the scope of this fixed-price contract, to the extent (if any) that those services entailed additional cost, the risk of that cost was assumed by the contractor. *See id.* at 172,445.

G2G also contends that the exit services involved far more work than was estimated by the PTO in soliciting bids for contract work, and that this justifies a claim for additional payment. We are in no position to judge whether this contention is correct, however, because the contractor has not provided data on which an evaluation could be made. The agency estimated that the inventory to be warehoused would be on “850 skids and including an estimated 200 different line items, which are stored in an area of approximately 13,000 to 15,000 square feet.” The contractor tells us that at the time the contract ended, the inventory was in 62,903 boxes and involved 200 line items. The 200 line item figures are consistent between estimates and actual count. We have no basis for comparing 850 skids to 62,903 boxes, in either volume or work entailed.

Having resolved the dispute on the PTO’s first defense, we have no need to consider the second.

Decision

The appeal is **DENIED**.

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STEPHEN M. DANIELS  
Board Judge