



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: August 30, 2018

CBCA 6077

PROS CLEANERS,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Bruce Webber, President of Pros Cleaners, Kenner, LA, appearing for Appellant.

Nathaniel Greeson and Hillary J. Freund, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Respondent.

Before Board Judges **SHERIDAN**, **ZISCHKAU**, and **RUSSELL**.

SHERIDAN, Board Judge.

Contractor, Pros Cleaners, alleges that the Federal Emergency Management Agency (FEMA) breached its indefinite delivery indefinite quantity (ID/IQ) contract and seeks damages totaling \$750,000. FEMA has moved for summary relief, asserting that its agreement with Pros Cleaners did not constitute a valid ID/IQ contract. For the reasons set forth below, respondent's motion is granted and the appeal is denied.

Background

On February 22, 2013, FEMA issued solicitation HSFE04-13-R-0004 for “day laborers or temporary help” to assist with emergency response efforts in eight southern states. The solicitation stated that the “Request for Proposal (RFP) is an Indefinite Delivery Indefinite Quantity (ID/IQ) contract for a total of five (5) years.” Exhibit 2 at 1. Part E.5 of the solicitation incorporated Federal Acquisition Regulation (FAR) clause 52.216-22 “Indefinite Quantity,” which stated that “the government shall order at least the quantity of supplies or services designated in the Schedule as the minimum.” The solicitation’s “Price/Cost Schedule” did not designate a minimum quantity. In its responses to vender questions, FEMA clarified that “labor rates are requested by each state identified in the solicitation” and that “the number of laborers is 10 . . . this is an Indefinite Delivery Indefinite Quantity Contract.” Pros Cleaners submitted the winning bid and was awarded contract HSFE04-13-D-0062 by FEMA on May 23, 2013.

Contract HSFE04-13-D-0062, executed by Pros Cleaners’ president, Mr. Bruce Webber, and contracting officer (CO) Cynthia Myatt, differed from the solicitation in three aspects: it omitted the indefinite quantity clause; it did not state that it was an ID/IQ contract; and it defined the period of performance as one “base year + four (4) option years.” The contract contained a schedule establishing the unit price for labor at \$25 per hour, but did not list a minimum quantity of labor. The contract’s value was not to exceed \$150,000.

FEMA canceled this contract by unilateral modification on January 22, 2014, and awarded Pros Cleaners a “new ID/IQ contract,” contract HSFE04-14-D-0062, for the same temporary day laborer work described in the original contract. CO Myatt informed Pros Cleaners that “the ONLY CHANGE MADE TO THE CONTRACT IS THE CONTRACT NUMBER.” As with the original contract, the new contract did not include an indefinite quantity clause or a guaranteed minimum quantity. Unlike the first contract, the second did not define the period of performance or state that the contract’s value was not to exceed \$150,000.

Pros Cleaners never received a task order for work under either contract. On December 24, 2017, Mr. Webber emailed CO Myatt to allege that FEMA breached its contract with Pros Cleaners by failing to issue it any “delivery order[s]” during the five year life of the contract and to request a contracting officer’s final decision. Contending that the contract authorized an award “not to exceed \$150,000 per occurrence,” Mr. Webber claimed Pros Cleaners was owed \$750,000 in damages. A new CO, Ms. Annette Wright, denied the claim in its entirety on April 2, 2018, noting that “the ID/IQ contract” did not “requir[e] FEMA to order \$150,000 worth of services from Pros Cleaners and there was no minimum

amount included in the contract.” Mr. Webber filed a notice of appeal to the Board on March 12, 2018, where the matter was docketed as CBCA 6077.

Discussion

FEMA has moved for summary relief as a matter of law. In its argument FEMA posits that Pros Cleaners never had a valid and enforceable ID/IQ contract. FEMA contends that the absence of a listed minimum quantity in either contract renders both invalid, limiting Pros Cleaners’ entitlement to “payment for services actually ordered and performed.” FEMA also asserts that because Pros Cleaners never received a task order from it, it never performed a service for the agency that merited compensation. Pros Cleaners points to those parts of the solicitation and modification that describe the contract as an “ID/IQ [contract]” as evidence that the agreement constituted an ID/IQ contract.

Respondent correctly characterizes this appeal as a question of pure contract interpretation where appellant argues he is owed compensation under a contract while respondent posits that no contract existed. We have jurisdiction to consider cases “where a plaintiff alleges the existence of a contract between it and the Federal Government.” *Muse Business Services, LLC v. Department of the Treasury*, CBCA 3537, 14-1 BCA ¶ 35,619, at 174,461 (citing *Engage Learning, Inc. v. Salazar*, 660 F.3d 1346, 1353 (Fed. Cir. 2011)).

Pure contract interpretation is a question of law that may be resolved by summary relief. *P.J. Maffei Building Wrecking Corp. v. United States*, 732 F.2d 913, 916 (Fed. Cir. 1984). Resolving a dispute on a motion for summary relief is appropriate when the issue is based on undisputed material facts. The moving party bears the burden of demonstrating the absence of genuine issues of material fact. All justifiable inferences must be drawn in favor of the nonmovant. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

An ID/IQ contract “must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services.” 48 CFR 15.504(a)(1) (2015). The minimum quantity must be more than a nominal quantity “[t]o ensure that the contract is binding.” 48 CFR 15.504(a)(2). Absent a guaranteed minimum quantity, an ID/IQ contract lacks the mutuality of consideration that would create binding rights and obligations. See *ASW Associates, Inc. v. Environmental Protection Agency*, 17-1 BCA ¶ 36,699, at 178,717. “Regardless of whether the contract is susceptible to interpretation as an indefinite quantity contract, a contract lacking this [minimum quantity] term cannot be construed as a valid indefinite quantity contract.” *Coyle’s Pest Control, Inc. v. Cuomo*, 154 F.3d 1302, 1306 (Fed. Cir. 1998) (citing *Willard, Sutherland & Co. v. United States*, 262 U.S. 489, 493 (1923)). Even if the agreement is explicitly characterized as an ID/IQ contract, it is

unenforceable if it does not contain a guaranteed minimum quantity. *See ASW Associates*, 17-1 BCA at 178,717.

Neither contract HSFE04-13-D-0062 nor HSFE04-14-D-0062 contain a guaranteed minimum quantity. Although the solicitation and amendments refer to these agreements as ID/IQ contracts, there is no mention of ID/IQ in the contracts themselves or inclusion of the appropriate ID/IQ clauses. Without a minimum quantity set forth in the contracts themselves, these agreements are defective and invalid for lack of consideration. *Carrington Group, Inc. v. Department of Veterans Affairs*, CBCA 2091, 12-1 BCA ¶ 24,993, at 171,984-5.

Pros Cleaners has not alleged that the contract contained a guaranteed minimum quantity, or otherwise differed from the document provided by the respondent. Although we have shown the appellant, whose representative is not an attorney, greater procedural latitude than we would extend to a party represented by an attorney, this more lenient standard for interpreting pleadings does not change appellant's burden of proof or our weighing of the factual record. *1-A Construction & Fire, LLP v. Department of Agriculture*, CBCA 2693, 15-1 BCA ¶ 35,913, at 175,552. Accordingly, the appellant has failed to raise an issue of material fact that would preclude summary relief.

Even without a valid contract, Pros Cleaners would be entitled to compensation had it performed a service ordered by FEMA for the agency's benefit. *See Coyle's Pest Control*, 154 F.3d at 1306; *see also ASW Associates*, 17-1 BCA at 178,718; *Ducke Group LLC v. Department of Veterans Affairs*, CBCA 3239, 13 BCA ¶ 35,337 at 173,459. It is undisputed, however, that Pros Cleaners never received or executed a work order from FEMA. As Pros Cleaners did not provide any services, it is not due any compensation.

Decision

As the agreement at issue was not an enforceable ID/IQ contract and appellant performed no work under the agreement, the Board grants the respondent's motion for summary relief, and the appeal is **DENIED**.

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

We concur:

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge