



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: April 11, 2019

CBCA 6233

WILLIAM BRENT SCHAEFFER,

Appellant,

v.

AGENCY FOR INTERNATIONAL DEVELOPMENT,

Respondent.

William Brent Schaeffer, pro se, Hendersonville, NC.

John B. Alumbaugh, Office of the General Counsel, Agency for International Development, Washington, DC, counsel for Respondent.

Before Board Judges **VERGILIO**, **O'ROURKE**, and **CHADWICK**.

VERGILIO, Board Judge.

The Board received from William Brent Schaeffer (contractor) a timely appeal of a contracting officer's decision denying a claim for more than the contracted rate for services. Despite negotiating and signing the contract, and receiving the agreed-upon rate, the contractor contends he is entitled to more under an agency regulation. The parties submitted the case on the record. The regulation does not dictate a different rate. The Board denies the appeal.

Findings of Fact

1. The parties negotiated and entered into a contract with an effective date of April 16, 2013. The contractor provided personal services. Compensation was based upon an agreed annual rate or salary, as well as other reimbursable costs. The contract specifies that the agency shall pay the contractor compensation subject to the applicable conditions and

limitations set out in the contract. The contract sets forth a maximum obligation to cover all compensation and reimbursable costs, as well as an annual rate of compensation. Exhibit 4 at 5 (¶ A.3.A, .C, .D) (all exhibits are in the appeal file).

2. The contract dictates that it shall be interpreted in accordance with the body of federal procurement law in the United States. The contract is a complete statement of the duties, compensation, benefits, and the like. Exhibit 4 at 32-33 (¶ GP.26).

3. For the performance period, beginning in 2013 through the submission of the claim in 2018, the contractor was paid at the agreed upon rate, as dictated in the contract and twenty-five bilateral modications. Complaint at 1 (¶ 2); Answer at 5.

4. Appendix D.4(e)(1) of the agency's acquisition regulations (AIDAR) identifies the method to establish a salary for personal services contractors:

Salaries for Personal Services Contractors shall be established based on the market value in the United States of the position being recruited for. This requires the Contracting Officer in coordination with the Technical Officer to determine the correct market value (a salary range) of the position to be filled. . . . The market value of the position then becomes the basis along with the applicants' certified salary history . . . for salary negotiations by the Contracting Officer. . . . The crucial point is the establishment of a realistic and reasonable market value for a job. The final determination regarding the reasonableness of a salary level rests with the Contracting Officer.

48 CFR Ch. 7, App. D.4(e)(1) (2013).

5. The contractor filed a claim seeking an additional \$46,358.92, claiming that contrary to the AIDAR, the agency utilized the incorrect base rate in establishing the salary for the position. Exhibit 1. The contracting officer denied the claim by decision dated May 29, 2018. Exhibit 2. The contractor filed an appeal with the Board on August 13, 2018.

Discussion

The contractor seeks additional compensation, alleging that the compensation rate in the contract violates the AIDAR. Specifically, the contractor posits particulars as to what the "market value in the United States" should encompass.

The regulation provides that salaries shall be based on the market value in the United States for the recruited positions, but does not direct that there is a one-to-one

correspondence between a market value and the ultimate salary. Quite the contrary, the regulation recognizes that salaries may be negotiated and states: "The crucial point is the establishment of a realistic and reasonable market value for a job. The final determination regarding the reasonableness of a salary level rests with the Contracting Officer." The regulation does not require a change to the contract. *See American Telephone & Telegraph Co. v. United States*, 307 F.3d 1374, 1377-79 (Fed. Cir. 2002). The negotiations apparently led to the establishment of a realistic and reasonable market value for the job. The contractor has not established a basis to reform the contract.

Other theories to deny the appeal, raised by the agency, need not be addressed.

Decision

The Board **DENIES** this appeal.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

We concur:

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge