



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR FAILURE TO STATE A CLAIM: July 28, 2023

CBCA 7622

BEACON POINT ASSOCIATES LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Timothy B. Hyland of Hyland Law PLLC, Reston, VA, counsel for Appellant.

Kathleen Ramos, Office of General Counsel, Department of Veterans Affairs, Arlington, TX, counsel for Respondent.

Before Board Judges **LESTER**, **SHERIDAN**, and **SULLIVAN**.

SHERIDAN, Board Judge.

Beacon Point Associates LLC (Beacon Point or appellant) asserts that the Department of Veterans Affairs (VA or respondent) breached the contract by deciding not to exercise option years and not to return equipment to appellant. Appellant seeks \$636,855.05 in costs and interest. As explained below, the Board grants the VA's motion to dismiss for failure to state a claim upon which relief can be granted.

Background

Beacon Point's Response to the VA's Request for Quotations

The VA issued a request for quotations (RFQ), VAATLANTA-STI-101519-01L03, seeking quotes for the lease of an intracranial surgical navigation system at the Atlanta VA Medical Center for a base year, with options for extensions of up to two additional years. Language in the RFQ placed the responsibility on the lessor to deliver the system and to pick it up once the lease ended.

Beacon Point responded to the request on May 29, 2020, with a quote to provide the equipment over a three-year period. Exhibit 12.¹ The quotation contained such terms and conditions as “EXTENDED PAYMENT PLAN TERMS AND CONDITIONS (EPP),” which stated in pertinent part:

(a) These Extended Payment Plan Terms and Conditions shall be deemed incorporated into a Delivery Order issued by the Department of Veterans Affairs (the “**Government**”) to Beacon Point Associates, LLC (“**Contractor**”). The Delivery Order and “Form Number BP101819” shall together constitute the entire agreement. It is understood that this agreement is an Extended Payment Plan (“**EPP**”). The Government will make the EPP Payments below for the asset(s) specified in the Delivery Order (“**Asset(s)**”), (i) unless it fails to receive appropriated funds to do so or terminates for convenience, and (ii) without any abatement, reduction, set-off, defense, counterclaim or recoupment whatsoever. The foregoing may be limited by the termination rights set forth in items 1(b) and 1(c) herein.

(b) The Government has an option to renew this EPP beyond the initial fiscal year and is obligated to use its best efforts annually to obtain sufficient funds from appropriated and other legally available sources to do so until completion of the EPP Term. Provided it obtains such sufficient funds, the Government shall exercise all renewal options. Because of this commitment, [the] Government is receiving favorable pricing which is not normally available. Delivery Orders shall not be deemed to obligate succeeding fiscal year's funds or otherwise commit the Government to renewal. However, the Government agrees that its known requirements are for the full EPP Term, and that Non-appropriations of Funds and Termination for Convenience shall be the only

¹ All exhibits are found in the appeal file, unless otherwise noted.

conditions that shall prevent annual renewal of the EPP. In the event the Government fails to exercise its option to renew this EPP or fails to use its best efforts to seek and obtain appropriations to support this EPP in any subsequent fiscal year, but expends funds for the functions which the Asset(s) were procured to perform, then the Government will be deemed to have had funds available to support this EPP. Asset(s) placed in service in accordance with this EPP shall be governed by the terms and conditions of this EPP for subsequent renewal years.

(c) . . . The Government agrees not to invoke Termination for Convenience unless the need for the functions that the Asset(s) were procured to perform no longer exists.

Id. at 000068.

The quotation set the term of the EPP at thirty-six months and set forth a payment schedule of \$159,857.91 for the base year, \$272,836.78 for option year 1, and \$272,836.78 for option year 2. With respect to the equipment, the quotation's terms and conditions provided, in pertinent part:

6. Return of Asset(s). Within thirty (30) days after termination or non-renewal of any Delivery Order in which the Government has not exercised a purchase option to acquire the Asset(s) hereunder, the Government shall, at its own risk and expense, have the hardware associated with the Asset(s) packed for shipment in accordance with the Contractor's specifications and shall return the hardware to the location as specified by the Contractor in the same condition as when delivered, ordinary wear and tear excepted.

Exhibit 12 at 000069. Beacon Point also included its own order of precedence clause in its quotation, which read as follows:

7. Precedence. The order of precedence in the event of any inconsistencies shall be as follows: These Extended Payment Plan Terms and Conditions, followed by the Delivery Order, followed by any other document.

Id.

Contract Award

On July 8, 2020, the VA sent a proposed contract on standard form (SF) 1449, titled "Solicitation/Contract/Order for Commercial Items," to Beacon Point for signature that did

not contain any language relating to the EPP. Exhibit 2 at 000001. Consistent with the RFQ, the proposed contract sought to lease an intracranial surgical navigation system and required “[n]ext day shipping in both directions included at no charge.” *Id.* at 000018. The proposed contract also contained its own order of precedence clause, from the Federal Acquisition Regulation (FAR), that conflicts with the self-drafted precedence clause in Beacon Point’s quote:

Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

Id. at 000027-28 (quoting FAR 52.212-4(s), Contract Terms and Conditions—Commercial Items (Oct. 2018) (48 CFR 52.212-4(s) (2020))).

After the proposed contract was sent, the parties added the RFQ number, which is also the same number that Beacon Point identified as its quotation number, and the date of Beacon Point’s quotation to pre-printed language in block 29 of the SF 1449:

29. AWARD OF CONTRACT: REF **VAALANTA-STI-101519-01L03**
OFFER DATED **5-29-2020**. YOUR OFFER ON SOLICITATION (BLOCK
5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET
FORTH HEREIN IS ACCEPTED AS TO ITEMS: [Blank]

Exhibit 2 at 000005. While the language in block 29 identifies that Beacon Point’s “offer” was accepted “as to [particular listed] items,” no items were actually listed in the blank at the end of the provision, and nothing in block 29 identified which items were “accepted.” In fact, with regard to the instruction to look to “block 5” to identify the relevant “solicitation,” block 5 was blank, identifying no solicitation number, although block 1

identified a requisition number. The contract does not reference any attachments, such as Beacon Point's quotation or any additional terms or conditions.

On September 25, 2020, the VA awarded the base year of contract 36C24720C0076 to Beacon Point for the intracranial surgical navigation system. The contract's statement of work (SOW) indicated that "next day shipping in both directions [is] included at no extra charge." Exhibit 2 at 000018.

The VA's Election Not to Exercise The First Option Period

Beacon Point delivered the equipment on November 19, 2020, and on January 12, 2021, a VA contracting officer's representative signed a certificate of acceptance. The contract was modified on January 14, 2021, to reflect new periods of performance.

On June 28, 2021, a VA contract specialist, on behalf of the VA contracting officer, notified Beacon Point that the VA would not exercise the first option period. This notification occurred more than four-and-a-half months before the end of the base period. Beacon Point did not attempt to pick up the equipment, and it remains at the Atlanta VA Medical Center.

Beacon Point's Certified Claim and Appeal

On July 22, 2022, Beacon Point submitted a certified claim seeking \$636,855.05 under the contract and alleging that the VA breached the contract by failing to renew the contract and to use its best efforts to obtain funding for the contract. On December 22, 2022, appellant filed the instant appeal based on a deemed denial, and the matter was docketed as CBCA 7622.² The contracting officer issued a final decision on February 2, 2023, denying the claim in its entirety and concluding that the contract did not incorporate Beacon Point's quotation and gave the VA unilateral authority to decide whether it would exercise the option periods.

Discussion

The VA moved to dismiss the appeal for failure to state a claim upon which relief can be granted, arguing that Beacon Point's complaint is insufficient to state a plausible claim on its face.

² Beacon Point designated its notice of appeal as its complaint.

The Board will grant a motion to dismiss for failure to state a claim upon which relief can be granted when the facts alleged in the complaint—with all reasonable inferences made in the appellant’s favor—do not “support a facially ‘plausible’ claim to relief.” *TranBen, Ltd. v. Department of Transportation*, CBCA 5448, 17-1 BCA ¶ 36,635, at 178,429 (quoting *Cambridge v. United States*, 558 F.3d 1331, 1335 (Fed. Cir. 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007))). The Supreme Court has described “facial plausibility” as follows:

A claim has facial plausibility when the plaintiff pleads factual content that allows the [tribunal] to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 557).

Rather than defer to an appellant’s interpretation of its contract in response to a motion to dismiss for failure to state a claim, the Board may review and interpret the contract, given that it “is an essential document that is implicitly incorporated into the appellant’s complaint.” *Integheartly Wheelchair Van Services, LLC v. Department of Veterans Affairs*, CBCA 7318, 22-1 BCA ¶ 38,156, at 185,311; see *Systems Management & Research Technologies Corp. v. Department of Energy*, CBCA 4068, 15-1 BCA ¶ 35,976, at 175,789. In interpreting the contract, we apply standard rules of contract interpretation:

To resolve this issue of interpretation, we look first to the plain language of the contract. See *Foley Co. v. United States*, 11 F.3d 1032, 1034 (Fed. Cir. 1993). The intention of the parties is gleaned from the contract’s clauses interpreted as a whole, giving meaning to all provisions wherever possible. An interpretation which gives a reasonable meaning to all parts of an instrument will be preferred to one which leaves a portion of it useless, inexplicable, inoperative, void[,] insignificant, meaningless or superfluous; nor should any provision be construed as being in conflict with another unless no other reasonable interpretation is possible. *Hol-Gar Mfg. Corp. v. United States*, 351 F.2d 972, 979 (Ct. Cl. 1965).

Reliable Contracting Group, LLC v. Department of Veterans Affairs, CBCA 3048, 14-1 BCA ¶ 35,475, at 173,944 (2013).

As an initial matter, we correct a misconception that Beacon Point repeatedly references in its briefing. In challenging the VA’s position that Beacon Point’s quote is not part of the parties’ contract, Beacon Point asserts that “[t]he VA accepted Beacon Point’s

offer,” as written, when it issued the contract. Appellant’s Response at 1. Beacon Point’s description of its quote as an “offer” that the VA “accepted” conflicts with the request for quotations process. FAR 13.004(a) expressly provides that a quotation is *not* an offer and that a contractor cannot rely on the Government’s issuance of an order in response to a quotation as the “acceptance” of an offer. Instead, the Government’s issuance of an order after receiving a quote serves as an offer to the contractor, which the contractor may then elect to accept or reject:

A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier’s quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

FAR 13.004(a); *see Gonzales-McCaulley Investment Group, Inc. v. United States*, 101 Fed. Cl. 623, 630 (2011) (“[T]he plain language of the FAR definitively forecloses th[e] possibility” of viewing a quotation as an offer that the Government can accept.).

The main gist of Beacon Point’s briefing is that the written contract document, as executed, includes language in block 29 that incorporates by reference all of the terms of Beacon Point’s quote. We disagree. Block 29 in Beacon Point’s contract includes language (from SF 1449) indicating that “your offer on solicitation (block 5), including any additions or changes which are set forth herein is accepted as to items” listed at the end of the block. It is somewhat odd that, given that Beacon Point submitted a quote and not an offer, the parties agreed to identify Beacon Point’s quote in block 29. Nevertheless, any confusion about whether the VA treated Beacon Point’s submission as a quote or an offer does not matter because, at the end of the phrase in block 29, the parties do not list a single item from Beacon Point’s quote that is being “accepted.” That is, even if the contracting officer here incorrectly treated Beacon Point’s quote as an “offer” by identifying it in block 29, the parties’ failure to identify a single item from Beacon Point’s quote as having been accepted means that none of it was incorporated into the contract. In a 2002 Federal Register notice announcing some minor modifications to the SF 1449, which was originally created in 1995, the drafters of SF 1449 specifically noted “that award is made only on the offeror’s items specifically listed in block 29.” 67 Fed. Reg. 13049 (Mar. 20, 2002). Here, because no items from Beacon Point’s quote are specifically listed in block 29, Beacon Point has no

basis for arguing that block 29 incorporates its quote, in full or in part, into the parties' contract.³

Beacon Point has identified no other language in the contract that purports to incorporate any terms from its quote. As a result, Beacon Point cannot rely on the payment and option extension terms that it set forth in its quote as contractually binding obligations on the VA's part. The VA is correct that Beacon Point has failed to state a claim upon which the Board can grant relief.

Decision

The VA's motion is granted, and the appeal is **DISMISSED FOR FAILURE TO STATE A CLAIM.**

Patricia J. Sheridan

PATRICIA J. SHERIDAN

Board Judge

We concur:

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

Marian E. Sullivan

MARIAN E. SULLIVAN

Board Judge

³ Incorporation would seem strange in the circumstances here, given that several of the provisions in Beacon Point's quote—for example, the provision requiring the VA to return Beacon Point's equipment at the end of the contract (instead of, as set forth in the contract, the requirement that Beacon Point pick up equipment at the end of performance) and an order of precedence clause that differs from the FAR's order of precedence clause—directly conflict with provisions in the actual contract.