



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR PARTIAL SUMMARY JUDGMENT DENIED:
April 15, 2025

CBCA 7882

INDUSTRIA PACIFIC JV,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Casey J. McKinnon of Cohen Seglias Pallas Greenhall & Furman PC, Washington, DC, counsel for Appellant.

David G. Fagan, Office of General Counsel, Department of Veterans Affairs, Bend, OR, counsel for Respondent.

Before Board Judges **GOODMAN**, **SHERIDAN**, and **NEWSOM**.

NEWSOM, Board Judge.

Appellant, Industria Pacific JV (IPJV), appeals a contracting officer's final decision on a claim concerning a contract with the Department of Veterans Affairs (VA) for design and construction of a primary care clinic at a VA Medical Center (VAMC). Appellant seeks partial summary judgment that the contract did not require appellant to flush air or sediment from the VAMC existing plumbing system and that any direction to perform such work was a change to the contract. We deny appellant's motion.

Background

On August 18, 2020, the VA awarded to IPJV contract number 36E77620C0071 (contract) for a firm, fixed-price of \$12,299,000. The contract required IPJV to design and construct a new primary care clinic for the Minneapolis VAMC. The new clinic was to connect to the existing VAMC facility. Appeal File, Exhibit 2 at VA00064-65, 68.¹

Several provisions in the contract and request for proposals (RFP) are relevant to this dispute. As IPJV notes, the RFP that led to the contract contemplated that the new clinic's plumbing system would connect (or "tie-in") to the existing VAMC plumbing system. Exhibit 5 at VA000147.² Also, the contract stated that during the construction of the new primary care clinic, government employees would continue to operate and manage the existing VAMC, so the contractor was required to schedule its work to permit the VAMC to operate. The contract stated:

1.8 Job Conditions - Work in Existing Building

- A. Building Operation: Government employees will be continuously operating and managing all facilities, including temporary facilities that serve the VAMC.
- B. Maintenance of Service: Schedule all work to permit continuous service as required by the VAMC.

Exhibit 42 at VA001863.

Further, the contract specifications' standards for delivery of clean piping and equipment systems required piping systems to be "flushed," stating:

- 2. Piping systems shall be flushed, blown or pigged as necessary to deliver clean systems.
- 3. The interior of all tanks shall be cleaned prior to delivery and beneficial use by the Government. All piping shall be tested in accordance with the specifications and the International Plumbing Code (IPC). All

¹ All exhibits are in the appeal file.

² The RFP stated "Design-Build contractor to provide pricing . . . for domestic water service into new building expansion . . . to connect into building 70 infrastructure." Exhibit 2 at VA000147.

filters, strainers, fixture faucets shall be flushed of debris prior to final acceptance.

Exhibit 42 at VA001861. Similarly, the contract incorporated standard specifications of the City Engineers Association of Minnesota, which required disinfection of watermains to include “flushing” of the watermain and cleaning of the pipe interiors of “all dirt and foreign material.” It provided:

E. Disinfection of Watermains

Before being placed in service, the completed water main shall be disinfected. . . . After the final flushing of watermain, the water shall be tested for bacteriologic quality.

- (1) The interior of the pipe and fittings shall be cleaned of all dirt and foreign material. . . . Unless otherwise indicated in the Plans, Specifications, and Special Provisions, the Contractor shall furnish all materials and perform the disinfecting, flushing, and testing as necessary for meeting the water quality requirements.

Exhibit 28 at VA000913-914.

Discussion

Summary judgment is appropriate when there are no genuine disputes of material fact and the movant demonstrates that it is entitled to judgment as a matter of law. *Mission Support Alliance, LLC v. Department of Energy*, CBCA 6477, 20-1 BCA ¶ 37,657, at 182,834 (quoting Board Rule 8(f) (48 CFR 6101.8(f) (2024))). Genuine disputes of material fact exist when a rational finder of fact could resolve an issue in favor of either party and the resolution of that issue would impact the outcome of the case under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). We must view all inferences in a light most favorable to the nonmoving party. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

IPJV seeks summary judgment that no contract provisions required it to flush air or sediment from the existing plumbing system and that any direction from the VA to perform that work would be a contract change. IPJV Motion for Partial Summary Judgment at 3-4. These are issues of contract interpretation.

“The fundamental objective in contract interpretation is to determine the parties’ intent at the time the contract was executed.” *Bank of America, National Ass’n v.*

Department of Housing & Urban Development, CBCA 5571, 18-1 BCA ¶ 36,927, at 179,888 (2017) (quoting *ASP Denver, LLC v. General Services Administration*, CBCA 2618, et al., 15-1 BCA ¶ 35,850, at 175,304 (2014)). To do that, we first look to the plain language of the contract. *Foley Co. v. United States*, 11 F.3d 1032, 1034 (Fed. Cir. 1993). We read the contract as a whole, giving reasonable meaning to all of its parts. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991). “An interpretation that gives meaning to all parts of the contract is to be preferred over one that leaves a portion of the contract useless, inexplicable, void, or superfluous.” *NVT Technologies, Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004).

In tension with IPJV’s arguments, the contract specifications explicitly required IPJV to flush *some* plumbing system. The specification stated that “[p]iping systems *shall be flushed*, blown or pigged as necessary to deliver clean systems” and that “[a]ll filters, strainers, fixture faucets *shall be flushed of debris* prior to final acceptance.” Exhibit 42 at VA001861 (emphasis added). Furthermore, the Minnesota engineering specifications incorporated into the contract required “flushing” of the watermain and cleaning of the pipe interiors of “all dirt and foreign material.” Exhibit 28 at VA 000913.

IPJV contends that these provisions refer only to the new plumbing system that IPJV was to deliver as part of the new clinic and do not refer to the pre-existing VAMC plumbing system. IPJV further points out that the contract required the Government, not IPJV, to operate the existing VAMC facilities. IPJV infers—without citing to any contract language—that the VA’s operation of the VAMC necessarily included flushing the existing plumbing system. If so, according to IPJV, it would make no sense for both IPJV and the VA to be responsible for flushing the same, pre-existing plumbing system. IPJV Reply Brief at 2-3.

Some of the contract language tends to support this interpretation. The specifications indicate that the purpose of flushing the plumbing was to “deliver clean systems.” Exhibit 42 at VA001861. The word “deliver” would seem to suggest the flushing requirement in that provision applied to the plumbing system that was to be delivered, *i.e.*, the new system.

We note also, and IPJV even urges, that the contract required IPJV to tie-in the new plumbing system to the pre-existing system. IPJV Statement of Undisputed Material Fact No. 4; Exhibit 5 at VA000147. So far as we can discern, the contract specifications do not explain whether the flushing required in the specification was to be done before or after tie-in. If the specification required IPJV to flush the plumbing *after* the systems were connected together, then it would seem to require IPJV to flush both systems. This interpretation would readily harmonize with the VA’s ongoing operational responsibilities as IPJV interprets them. The VA would be responsible for operating the existing facility.

Meanwhile, to ensure it delivered a clean plumbing system, when tying-in the new system IPJV would be required to flush the combined systems.

Neither party has pointed to any language in the contract that clarifies the flushing requirements in the specifications. Nor has either party presented extrinsic evidence of trade practice which might be instructive. *See, e.g., Hunt Construction Group, Inc. v. United States*, 281 F.3d 1369, 1373 (Fed. Cir. 2002). We conclude that the contract's plain language, at least the language that the parties cite, does not unambiguously support IPJV's interpretations. Notably the VA does not seek summary judgment, and we expressly do not hold the converse proposition that the contract required IPJV to flush the existing plumbing system. The cited contract provisions simply do not resolve this issue.

Decision

The motion is **DENIED**.

Elizabeth W. Newsom
ELIZABETH W. NEWSOM
Board Judge

We concur:

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge