



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR SUMMARY RELIEF DENIED: May 28, 2010

CBCA 449

NAVIGANT SATOTRAVEL,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

James H. Roberts, III and Carrol H. Kinsey, Jr. of Van Scoyoc Kelly PLLC, Washington, DC, counsel for Appellant.

Michael J. Noble, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **BORWICK**, **HYATT**, and **KULLBERG**.

KULLBERG, Board Judge.

Appellant, Navigant SatoTravel (NST), moves for summary relief in the quantum phase of this appeal. NST appealed the decision by the General Services Administration's (GSA's) contracting officer that directed NST to remit industrial funding fee (IFF) payments in connection with an order for travel services issued by the Army Contracting

Agency-ITEC4 (DoD) for Defense Travel Region 6 (DTR6).¹ In the entitlement phase of this appeal, the Board conducted a hearing and issued a decision that denied the appeal as to entitlement; the Board subsequently denied NST's motion for reconsideration. *Navigant SatoTravel v. General Services Administration*, CBCA 449, 09-1 BCA ¶ 34,098, *motion for reconsideration denied*, 09-2 BCA ¶ 34,207.² The Board's decision as to entitlement held that NST was responsible for paying IFF to GSA for certain transactions under DoD's order for travel services. Only the issue of quantum, the amount of IFF to be remitted, is before the Board. NST contends that GSA has no quantum recovery in that DoD did not fund or pay IFF, and GSA contends that NST is raising an argument that should have been presented during the entitlement phase of this appeal. We deny the motion.

Background

Only those facts that are necessary for a discussion of appellant's motion are set forth.³ On March 24, 2004, the Federal Supply Service (FSS) of GSA issued solicitation number FBGT-RK-040001-B (solicitation), Travel Services Solutions. Appeal File, Exhibit 28.⁴ The types of services to be provided under the solicitation were classified by special item numbers (SINs). *Id.* at 6. Those travel-related services under the statement of work relevant to this matter included: travel agent services/travel management center services (SIN 599-2), new products/services (SIN 599-99), and contract support items (SIN 599-1000). *Id.* at 7-20.

Paragraph C.19 of the solicitation, General Services Administration Regulation (GSAR) 552.238-74, Industrial Funding Fee and Sales Reporting (JUL 2003),⁵ required the contractor to "accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter." Exhibit 28 at 35. The

¹ The proceedings in this appeal were bifurcated. Board's Memorandum of Conference Call and Order (Mar. 8, 2007) at 3.

² The Board previously denied NST's motion for summary relief during the entitlement phase of this appeal. *Navigant SatoTravel v. General Services Administration*, CBCA 449, 08-1 BCA ¶ 33,821.

³ The Board's decision on entitlement set forth a detailed set of findings of fact. *Navigant SatoTravel*, 09-1 BCA at 168,598-603.

⁴ All exhibits are found in the appeal file, unless otherwise noted.

⁵ 48 CFR 552.238-74 (2003).

contractor was required to pay IFF to GSA at a rate set for each type of reported sale by remitting “IFF to FSS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.” *Id.* at 36. The IFF for travel agent services was \$1.50 per transaction. *Id.* at 37.

On May 5, 2004, GSA awarded to NST contract GS-33F-0020-P (FSS contract) under the solicitation. Exhibit 29. NST agreed to provide services under SINs 599-2, 599-9, and 599-1000. *Id.* at 2. NST’s IFF rate for services under SIN 599-2 was \$1.50 per transaction. *Id.*

On September 2, 2004, DoD issued request for quotations W91QUZ-04-T-0016 for DTR6 travel services, and on October 29, 2004, DoD issued to NST order number W91QUZ-05-F-0005 (order) for DTR6 travel services. Exhibits 1, 2. Under that order, NST provided travel services that included automated services through the Defense Travel System (DTS) web portal, DTS services in which assistance was provided (DTS “touched”), and “traditional” methods for a base period (November 29, 2004, to March 31, 2005) and two option periods (April 1 to September 30, 2005, and October 1 to November 28, 2005). Exhibit 1 at 2-43. Each of the types of services for the base and option periods was priced by NST under contract line items (CLINs).⁶ *Id.*

On October 19, 2005, GSA informed NST that it would conduct a “contractor assistant visit” to insure that sales were being reported and that IFF was being remitted. (Exhibit 3). GSA subsequently determined that DoD had issued to NST its order for DTR6 travel services under NST’s FSS contract, but NST had failed to remit IFF as required under the terms of its FSS contract with GSA. Exhibits 4-7. On March 21, 2006, GSA’s contracting officer issued a decision that directed NST to pay IFF in the amount of \$292,609.50 for SIN-2 transactions (DTS, DTS “touched,” and “traditional” travel services) under its order from DoD for DTR6 travel services. Exhibit 8. The contracting officer determined the amount of IFF by multiplying the IFF rate, \$1.50 per transaction, times the number of SIN-2 transactions, 195,073. *Id.*

⁶ NST proposed unit prices for DTS, DTS “touched,” and “traditional” travel services under CLINs 0001-0003 for the base period and the related CLINs for the option periods (CLINs 0016-0018 and 0031-0033). Exhibit 2 at 3-8, 18-21, 32-34.

Discussion

In its motion for summary relief, NST argues that “GSA is entitled to a quantum amount of zero Industrial Funding Fees because claimant GSA has not, and cannot, show or sustain its burden of proof that the customer agency responsible for IFF, [DoD], obligated, reserved, funded, or paid any amount of money for IFF relating to the order that [DoD] placed with NST.” Appellant’s Motion for Summary Relief at 6. GSA argues that NST is improperly arguing an issue that should have been raised during the entitlement phase of this appeal.

Although NST’s statement of undisputed facts asserts that GSA has admitted that DoD cannot document that it obligated or paid funds for IFF, GSA has shown that it has made no such admission in discovery, and, moreover, GSA has objected to doing so on the grounds of relevance. Appellant’s Motion for Summary Relief at 1; Respondent’s Response to Appellant’s Motion for Summary Relief at 5. NST’s argument that the Board should grant its motion for summary relief because GSA cannot meet its burden of proof, therefore, is not a basis for this Board to grant summary relief because GSA, in order to prevail, need not show that DoD obligated or paid funds for IFF.

It is well recognized that “[w]hen a Board bifurcates proceedings and one party attempts to relitigate matters during quantum proceedings that were covered in entitlement proceedings, *res judicata* and the doctrine of law of the case apply.” *Gilroy-Sims & Associates, Ltd.*, GSBCA 8720, et al., 90-3 BCA ¶ 23,132, at 116,147-48 (citing *Maitland Brothers Co.*, ASBCA 29825, 85-3 BCA ¶ 18,234, at 91,555). The Board’s decision on entitlement stated the following:

For purposes of meeting its burden of proof, it is only necessary for GSA to establish that: (1) GSA awarded to NST an FSS contract that required NST to pay IFF; (2) DoD issued to NST an order to provide DTR6 travel services under NST’s FSS contract; (3) NST accepted that order and provided such services to DoD that were transactions requiring the payment of IFF; and (4) NST has failed to remit to GSA those IFF payments. GSA has met its burden of proof.

The only work under the order for DTR6 travel services for which GSA seeks IFF are DTS, DTS “touched,” and “traditional” travel agent services, which are under CLINs 0001, 0002, and 0003 for the base period and the corresponding CLINs for the option periods. . . . NST is responsible for paying

IFF at the rate set forth under SIN-2 of its FSS contract, \$1.50 per transaction, for those transactions under DTR6 that include DTS, DTS “touched,” and “traditional” travel services.

Navigant SatoTravel, 09-1 BCA at 168,605.

NST’s present motion for summary relief simply reargues the question of GSA’s burden of proof as to its contractual duty to remit IFF, which is an entitlement issue. Although NST frames its motion as a quantum issue, NST simply raises an entitlement issue in a different context. Throughout the entitlement phase of this proceeding, NST argued that DoD’s order for DTR6 travel services was an open-market contract and not an order under its FSS contract. *Navigant SatoTravel*, 09-1 BCA at 168,603. The Board’s decision on entitlement recognized that any failure by NST to collect IFF from DoD as a result of its administration of the order for DTR6 travel services was not a defense to its obligation to remit IFF to GSA, and NST, consequently, is now precluded from arguing during the quantum phase of this appeal that its obligation to remit IFF to GSA is conditioned upon DoD funding or paying IFF.

Decision

Appellant’s motion for summary relief is **DENIED**.

H. CHUCK KULLBERG
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

CATHERINE B. HYATT
Board Judge