



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: November 15, 2012

CBCA 1897

JEROME T. DUNBAR,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Jerome T. Dunbar, pro-se, Hamden, CT.

Kathleen K. Barksdale, Office of Regional Counsel, General Services Administration,
Philadelphia, PA, counsel for Respondent.

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

HYATT, Board Judge.

Jerome T. Dunbar (appellant) has appealed the decision of a General Services Administration (GSA) contracting officer terminating for default his contracts to purchase items sold at auction by GSA and imposing liquidated damages. The appeal has been submitted for decision on the written record without a hearing. Rule 19 (48 CFR 6101.19 (2011)). For the reasons stated, we deny the appeal.

Findings of Fact

1. Mr. Dunbar was the successful bidder on seven individual lots advertised under internet sale 31QSC110016. This group of lots - 19, 20, 21, 50, 58, 61, and 73 -- consisted of assorted electronic items located at the National Aeronautics and Space Administration's (NASA's) Goddard Space Flight Center in Greenbelt, Maryland. A separate contract was awarded for each of the seven lots.

2. The terms and conditions applicable to auction purchases provide as follows with respect to payment for and removal of property awarded to a successful bidder:

Payment and Removal Timeframes.

If you are the successful bidder, property must be paid for within 2 business days and property removed within 10 business days from the time [and] date of the award email notification of sales results, unless otherwise specified in the contract. After payment is processed, a copy of the Purchaser's Receipt and Authority to Release Property will automatically be emailed to the successful bidder

Removal

Property must be removed within 10 business days from the date and time of award email notification. A signed Purchaser's Receipt and Authority to Release Property must be presented prior to removal of property to verify proof of purchase; otherwise removal will not be permitted. . . . Some locations may require successful bidders to call for an appointment prior to . . . removal of property.

Appeal File, Exhibit A (all exhibits cited are found in the appeal file).

3. The default clause of the terms and conditions provides in pertinent part:

Bidders are cautioned to bid only on items they are prepared to pay for and remove in accordance with the online sales terms and conditions of this sale. Failure to pay for and remove all awarded items, or all awarded items within a lot within the timeframe specified, could result in termination of the contract. The bidder will also be subject to paying liquidated damages.

If you are awarded an item on GSA Auctions, you have a responsibility to pay for the item or lot that you were awarded within 2 business days from the date [and] time the email award mail notification was sent and promptly remove it within 10 business days from the date [and] time the award email notification was sent, unless otherwise specified in the contract. If you fail to meet either of these two conditions, you will be in violation of the online sales terms and conditions of your contract with the Government and will be considered “in default”.

As a defaulted bidder, you will be responsible for the payment of liquidated damages, an administrative fee for the processing and re-handling of the item for which you neglected to pay for and/or remove. The charge will total 20% of the purchase price of the award amount or \$200, whichever is greater.

Exhibit A.

4. Email notifications dated December 11, 2009, at approximately 7:00 p.m., informed Mr. Dunbar that he was the successful bidder for each of the lots and instructed that he had two days from the date and time of the notices to pay for the lots and ten business days from the date and time of the emails to remove the lots from the NASA location in Greenbelt, Maryland. Exhibits B, C.

4. Mr. Dunbar timely paid for these purchases and received the signed purchaser's receipt and authority needed to release property. He sent an email message to GSA on December 30, stating that due to inclement weather he needed additional time to pick up the property. On December 31, 2009, GSA granted him an extension until January 7, 2010, to pick up the lots he had purchased. Subsequently, the GSA contracting officer advised Mr. Dunbar by email with a reminder that he must pick up the items by no later than Thursday, January 7, 2010, adding that no further extension would be granted.

5. Mr. Dunbar was unable to meet the January 7 deadline. He requested and was granted an additional extension. Two email messages concerning this extension were sent by GSA to Mr. Dunbar on January 11, 2010. The first message, sent in the morning, informed Mr. Dunbar that:

I have been asked by the contracting officer . . . to contact you and inform you that while he has granted you an extension for removal until Friday, January 15, 2010, this removal must be completed by 2:30 p.m. on that day.

Removal is by appointment only. No additional extension for this sale will be granted. Additionally, the NASA Goddard facility is not open on Saturdays or Sundays.

A copy of this email message was included by Mr. Dunbar in materials he submitted to the Board in support of his appeal. GSA sent a follow-up email message, at 3:47 p.m. on the afternoon of January 11, to the same effect:

January 16, 2010 is a Saturday and Federal facilities are usually not available on Saturdays or Sundays. I know that [the contracting officer] granted you an extension and I emailed you this morning stating that he asked me to contact you and inform you that the items must be removed by 2:30 p.m. on Friday, January 15, 2010, by 2:30 p.m.

6. On January 14, 2010, at 8:40 a.m., the property custodian at NASA's Goddard facility sent Mr. Dunbar an email message asking him to make an appointment that day in order to provide the security office a day's notice of his upcoming visit.

7. On January 15, at 4:07 p.m., Mr. Dunbar advised the NASA custodian by email message that he had been in transit to pick up the items in Maryland, and had not been able to receive calls or email messages because his cell phone had been inoperable while he traveled. He further stated that he had not been aware that he had to arrive by 2:30 p.m. on January 15, or that he needed to make an appointment in order to be processed through security.

8. On January 19, 2010, the GSA sales contracting officer acknowledged receipt of appellant's email message to the NASA custodian and responded:

Mr. Dunbar: While I recognize that you may have had communication difficulties of late per your e-mail below, when you registered as a bidder at GSA Auctions, you certified that you would adhere to the standard terms and conditions related to both payment and removal of awarded property. Consequently, at this time I am advising you that we have today terminated your seven sales contracts as related to GSA Sale 31QSC110016. The attachment below advises you of this termination action and indicates the portion of your payment that will be retained as liquidated damages. Our office will take necessary steps to issue you your partial refunds related to those seven contracts.

The attached notice of termination stated that Mr. Dunbar had been found to be in default of the seven individual sales contracts under for GSA Sale 31QSC110016 for failure to remove lots 19, 20, 21, 50, 58, 61, and 73. GSA retained liquidated damages in the cumulative amount of \$1400 for the seven contracts, and stated it would refund the amount of \$445. Exhibits H, I.

9. Mr. Dunbar filed the notice of appeal in this matter with the Board on February 19, 2010. The only documents included with that appeal were those pertaining to the termination for default of the contract for the sales of various lots of computer items located at the NASA facility in Greenbelt, Maryland.

10. On February 22, 2010, Mr. Dunbar received another email message terminating for default an on-line auction sale, lot 41QSC110072002, for miscellaneous computer equipment, located at NASA Marshall Space Flight Center in Huntsville, Alabama. This default action was similarly predicated upon his failure to remove the lot before the last of several extensions of the deadline had passed.

Discussion

At the outset, we address the scope of this appeal. Mr. Dunbar's original appeal submission to the Board, filed on February 19, consisted of a sheaf of papers, many of which were illegible. It was difficult, if not impossible, to read some of the attachments, including the termination decisions for the lots located at Goddard. None of the legible attachments refer to the Huntsville sale, nor do the illegible ones so far as they can be deciphered. Because the documents were so illegible, the Board and counsel for GSA diligently tried to work with Mr. Dunbar to determine the scope of the appeal. Eventually, Mr. Dunbar stated, in conference calls and in a subsequent submission provided in 2011, that he was appealing the terminations of the Goddard and Huntsville contracts. A careful review of Mr. Dunbar's notice of appeal and attached documents, however, establishes that only terminations of the sales contracts for the lots located at NASA's facility in Greenbelt, Maryland, were included. Mr. Dunbar never properly appealed the default termination of the Huntsville contract and thus we cannot address the merits of that termination action in this decision.

With respect to the items that were located in Greenbelt, Maryland, the Board has previously explained that

[o]n-line auctions are governed by rules prescribed by the organizations which conduct them. . . . Auctions conducted by GSA, through its GSAAuctions.gov website, follow this general principle: they are governed by terms and

conditions promulgated by the agency. To participate in a GSA on-line auction, a person must agree to these terms and conditions.

Fred M. Lyda v. General Services Administration, CBCA 493, 07-2 BCA ¶ 33,631, at 166,571 (quoting *Darren R. Gentilquore v. General Services Administration*, GSBCA 16705, 05-2 BCA ¶ 33,117, at 164,115). Mr. Dunbar agreed to pay for the items within two days and remove them from the NASA facility within ten days of the notice of award. GSA accommodated Mr. Dunbar by agreeing to two time extensions for removal of the equipment, the last through January 15, 2010, by 2:30 p.m. In reminding Mr. Dunbar that he had only through Friday, January 15, at 2:30 p.m., and not until January 16, to remove the lots, GSA cautioned that there would be no further extensions of the deadline. Once the deadline passed, GSA terminated the contracts for default and assessed liquidated damages.

Mr. Dunbar contends that he received an initial email message that did not specify a time by which he had to pick up the lots. Nonetheless, he has not asserted that he did not receive the message, sent on January 11, informing him of the date and time by which removal of the lots had to be accomplished. Instead he states that he was traveling and it was not convenient to check his email account. He further states in his record submission that he arrived at “approximately” 2:30 p.m. and was told that he was too late. His email message, addressed to the NASA custodian, was sent on that afternoon after 4:00 p.m.

While performance of the contracts was ongoing, it was Mr. Dunbar’s responsibility to check his email messages on a regular basis. The notice of default was properly issued in accordance with the terms of the auction. Respondent complied with its obligations by tendering the purchase price less liquidated damages. The terms of the auction obligated a purchaser to timely remove any property for which he is the successful bidder and did not require GSA to continually extend the time within which a purchaser may accomplish this. See *Wireless and Gifts v. General Services Administration*, CBCA 2325, 11-2 BCA ¶ 34,840; accord *George Howell v. General Services Administration*, CBCA 2520, 11-2 BCA ¶ 34,862.

Decision

The appeal is **DENIED**.

CATHERINE B. HYATT
Board Judge

We concur:

HOWARD A. POLLACK
Board Judge

H. CHUCK KULLBERG
Board Judge