



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 11, 2012

CBCA 2763-RATE

In the Matter of ABBEYS SPECIALIZED HAULERS

Mara Lee Adams of Abbeys Specialized Haulers, Kansas City, MO; and Marc M. Kuney, Director of Logistics, Blackhawk Transport/Logistics, Beloit, WI, appearing for Claimant.

Mary C. Bates, Director, Transportation Audits Division, Office of Travel and Transportation Services, Federal Acquisition Service, Arlington, VA, appearing for General Services Administration.

Col. Charles D. Hayes, Staff Judge Advocate, Military Surface Deployment and Distribution Command, Department of the Army, Scott Air Force Base, IL, appearing for Department of Defense.

SOMERS, Board Judge.

The Defense Contract Management Agency (DCMA) solicited bids to transport a V-22 aircraft fuselage from Boeing Helicopters, Ridley Park, Pennsylvania, to Bell Helicopters, Amarillo, Texas. The solicitation included the actual weight and dimensions of the fuselage in order to allow bidders to determine and calculate the types of permits that would be necessary for this transport. Bidders were to include all relevant charges directly related to the shipment in their bids.

The period for submitting bids closed on May 17, 2011. DCMA awarded the shipment to Abbeys Specialized Haulers (ASH), with \$16,589 to be paid to the carrier. The contract required the carrier to pick up the fuselage from the point of origin on May 23, 2011, and to deliver the item on May 26, 2011. ASH brokered the load to Admiral

Merchants Motor Freight, Inc. (Admiral). Admiral arrived on May 23, 2011, the freight was loaded, and the shipment moved forward.

Unfortunately, the shipment of this freight did not go as planned. Apparently, the load departed the DCMA contractor facility without the correct permits. Admiral traveled as far as the Maryland/Virginia border on the day of departure. Shipment stopped when it was determined that the appropriate permits had not been issued. The DCMA contracting officer determined that it would be in the Government's best interest to have the freight returned to origin the next day. However, due to a dispute between ASH and Admiral, the freight was not returned for three or four days. ASH alleges that the delay occurred in part because it could not resolve the permit issue over the Memorial Day weekend, among other reasons.

In any event, on November 15, 2011, ASH submitted an invoice for payment of \$15,220, which the contracting officer denied. The contracting officer determined that the carrier's failure to have the proper permits ready before leaving the pickup site "is a planning discrepancy on the carrier."

ASH next submitted an invoice for \$10,000.¹ A traffic management specialist from the Department of the Army Military Surface Deployment and Distribution Command (SDDC) denied the claim in total. Upon denial of the claim, SDDC notified ASH of its right to appeal to the General Services Administration (GSA).

GSA reviewed the case in December 2011, and determined that ASH should be compensated a total amount of \$4100 out of the \$10,000, which included:

| | |
|---------------------|---------------------------|
| Line haul min/chg | \$1,500 x 2 = \$3,000 |
| Escort min/chg | \$500 x 2 = \$1,000 |
| Misc. chg | \$100 x 1 = <u>\$ 100</u> |
| Total Reimbursement | \$4,100 |

GSA denied the remainder of the claim.

ASH submitted a request for reconsideration, seeking the remaining balance of \$5900. When GSA denied the request, ASH asked the Board to review GSA's determination.

¹ The record does not explain why the two invoices sought different sums.

GSA's Federal Acquisition Service submitted comments on this matter and documents in support of its position. The representative explained that payment of \$4100 was fair and reasonable for services provided in compensation for "partial performance to the delay/turnaround point."

SDDC also submitted comments, stating that the regulations are clear that the carrier is responsible for obtaining permits, citing Defense Travel Regulation (DTR), pt. II, Cargo Movement, ch. 202-10, para. O, Permits for Motor Shipments, which reads, in pertinent part:

Carriers are required to obtain all necessary permits. Shipping activities must not release DoD [Department of Defense] oversize/overweight cargo shipments until the carrier has notified or presented the shipping activity with a written statement that they have, or will be able to obtain, required state road-use permits. At a minimum, the carrier must present to the shipping activity the permit for the origin state prior to shipment release. Carrier requests to utilize a 'rolling permit' process will not be permitted.

SDDC asserts that the carrier presented the minimum requirements in order for DoD to properly release the shipment. Thus, any delay and/or failure to obtain the required permits for transit to the final location are the fault of the carrier. SDDC states that "[a]lthough [partial reimbursement] was not in line with SDDC's original decision to deny the claim in total, SDDC also recognizes that exigent circumstances existed on this particular shipment and understands GSA's decision to allow a partial award of the claim."

The Board contacted the carrier to determine whether it would submit any additional material in support of its claim. It informed the Board that it would not be providing any more documentation.

We conclude that the carrier has not demonstrated entitlement to any additional payment. The regulations required the carrier to obtain the permits required to transport the shipment from the point of origin to its destination. The record indicates that the failure of the carrier to obtain necessary permits resulted in the shipment being stopped at the border of Virginia and Maryland, and, ultimately, in the decision to return the shipment to the point of origin.

The claim is denied.

JERI KAYLENE SOMERS
Board Judge