



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR PARTIAL SUMMARY RELIEF DENIED: April 7, 2014

CBCA 3354

BRASFIELD & GORRIE, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Laurence Schor, Dennis C. Ehlers, and Robert D. Pratt of Asmar, Schor & McKenna, PLLC, Washington, DC; and Axel Bolvig III of Bradley Arant Boult & Cummings, LLP, Birmingham, AL, counsel for Appellant.

Stacey North-Willis, Beth Chesney, Ogochukwu Ekwuabu, Benjamin Diliberto, and Charlma Quarles, Office of the General Counsel, Department of Veterans Affairs, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **HYATT**, and **VERGILIO**.

DANIELS, Board Judge.

Many disputes have arisen during performance of the contract between the Department of Veterans Affairs (VA) and Brasfield & Gorrie, LLC (B&G) for the build-out of the hospital and clinic at the VA's Medical Center in Lake Nona, Florida. Among those disputes is one involving B&G's Claim 2, for damages the contractor and its subcontractors allegedly incurred as a result of a suspension of work directed by the VA. This claim is for eighty-five days of compensable delay and associated costs in the amount of \$5,046,738. The VA contracting officer granted the claim in part, concluding that "B&G and its

subcontractors are entitled to 56 calendar days of additional contract time and additional compensation as identified in Change Order (CO) -16L and Settlement by Determination (SD) 351.” B&G appealed this decision, asserting that it is entitled to an additional twenty-nine days of compensable delay and those costs which it earlier claimed but the contracting officer did not agree to pay.

B&G has now submitted a motion for partial summary relief in the appeal. The contractor notes that through SD 351, the VA has paid it \$1,687,100 for extended general conditions costs it incurred. The motion addresses \$2,084,917 in costs allegedly incurred by B&G’s subcontractors during the fifty-six days of delay allowed by the contracting officer, plus \$97,829 in B&G markups on those costs. The contractor maintains:

B&G submitted, on behalf of its subcontractors, detailed cost requests . . . in the 56 Day Cost Proposal expressly requested by the VA. VA has had these cost proposals for more than a year and has not audited the subcontractor cost requests or expressed any disagreement with them. B&G submits that this constitutes an admission that B&G’s subcontractors are entitled to costs in the amount submitted in the 56 Day Cost Proposal.

In response, the VA maintains that B&G has not shown “that claimed costs for the 56 days of compensable delay were actually incurred, that they were properly allocable to the delay, and that they were otherwise reasonable.” For each and every one of the subcontractors whose costs are sought, the VA has made specific objections to the claimed costs. For example, for the first subcontractor, the VA says that B&G has not demonstrated that the subcontractor acted prudently in keeping both a project manager and a superintendent on the job during the period of delay, or in having manufactured items stored during the period (rather than ordering those items only when ready for installation); that the claim preparation costs sought were necessary; or that the cost of the time of the company’s accountant was appropriately billed as a direct cost rather than assigned to overhead.

Resolving a dispute on a motion for summary relief is appropriate when the moving party is entitled to judgment as a matter of law, based on undisputed material facts. The moving party bears the burden of demonstrating the absence of genuine issues of material fact. All justifiable inferences must be drawn in favor of the nonmovant. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). In our view, the objections made by the VA show that genuine issues of material fact suffuse this case. B&G’s filing of the motion for summary relief has served to smoke out the VA’s position on the various elements of the claim. The motion cannot be granted, however. At the parties’ request, the Board has authorized discovery to continue in this case and associated cases for nearly a year. We expect that the parties will use this time to develop

and address the matters the VA has raised in opposing the motion. *See Burnside-Ott Aviation Training Center, Inc. v. United States*, 985 F.2d 1574, 1582 (Fed. Cir. 1993); *CB&I Federal Services LLC v. Department of Homeland Security*, CBCA 3112, et al. (Mar. 26, 2014).

Decision

B&G's motion for partial summary relief is **DENIED**.

STEPHEN M. DANIELS
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

JOSEPH A. VERGILIO
Board Judge