



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 18, 2015

CBCA 4071-RATE

In the Matter of SHERIDAN TRANSPORTATION SYSTEMS, INC.

Earl E. Cloud, Jr., of Cloud and Cloud, Huntsville, AL, appearing for Sheridan Transportation Systems, Inc.

Joyce Clark, Director, Transportation Audits Division, Office of Travel and Transportation Services, Federal Acquisition Service, General Services Administration, Washington, DC, appearing for General Services Administration.

Deborah Muldoon, Attorney-Advisor, Military Surface Deployment and Distribution Command, Department of the Army, Scott Air Force Base, IL, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

The General Services Administration (GSA) Transportation Audits Division decided that a claim submitted by Sheridan Transportation Systems, Inc. (Sheridan) for detention and return charges should be denied because it was untimely filed. Because we conclude that Sheridan did not timely file a claim, we dismiss the company's request for a review of this decision.

Background

On April 7, 2008, the Military Surface Deployment and Distribution Command (SDDC) issued a solicitation for Department of Defense (DoD) transportation service providers (TSPs) to submit binding rates for transporting freight during the "2008-2009 Natural Disaster Season, which [ran] from 1 June 08 until 31 May 09, unless otherwise

specified” The solicitation noted that it would “apply during any hurricane/disaster where DLA [the Defense Logistics Agency] [had] been requested to participate.” The TSPs were to haul disaster relief materials using dry trailers from points of origin to drop-off locations identified by DLA.

Under the “Proposed Shipping Dates” section, the solicitation stated, in pertinent part:

- a. Shipping Date Available: Unknown at this time. . . .
- b. Required Delivery Date: Carrier will provide initial trailer movement from DOD or commercial storage location to identified Federal Emergency Management Agency (FEMA) locations where the trailer will be dropped. There may be other destinations not listed in this solicitation. Those destinations will be determined by the results of any destruction by any hurricane that may hit the United States mainland. Any movement of the trailer from the initial destination point will be transported and the responsibility as an organic movement performed and controlled by FEMA. DLA will report daily to the carrier the location of the trailer. DLA and FEMA will coordinate, draft, and finalize maintenance responsibility of trailer via a Memorandum of Agreement (MOA) between parties.
- c. Return of Empty Trailers (ERS) payment will occur under the following circumstances only. When carrier owned vans/refrigerated vans have been dropped in the disaster area for a length of time, the carrier can submit ERS per mill payment against the original BOL [bill of lading].

In section seven, the solicitation described the “protective/accessorial services required,” in pertinent part:

- a. Carrier to provide detention rate per hour/per day. Carrier will allow 2 hours free time at origin and destination. A maximum of 10 hours of detention will be paid per day. Detention at origin and destination will be paid by DLA. Carrier needs to provide a detention rate for trailers with power and a detention rate for trailers without power.

. . . .

- j. Carrier will provide return trailer movement from identified FEMA location back to DOD, commercial, or FEMA storage location, or return to carrier possession upon release of trailer by FEMA.

The solicitation also provides:

Carriers that are not DTTS [Defense Transportation Tracking System] or Qualcomm capable will be the last chosen for service. If chosen for service, a non-DTTS or non-Qualcomm carrier must be able to provide the following tracking information to DLA:

....

Current location

Sheridan acknowledges that it was a non-DTTS and non-Qualcomm carrier.

On May 2, 2008, Sheridan submitted a bid with an effective date of tender of June 1, 2008, and an expiration date of tender of May 31, 2009. The bid included detention charges of \$675 per hour for trailers with power unit and \$365 per hour for trailers without power unit. SDDC accepted Sheridan's bid and awarded Sheridan a contract running from June 1, 2008 until May 31, 2009. Sheridan shipped many items for the Government pursuant to the contract. In the case currently before the Board, detention charges and costs incurred during the return trips for two trailers that were delivered to Louisiana in September 2008 are at issue.

On September 6, 2008, Sheridan delivered soldiers' rations pursuant to BOL number 165544NV in trailer number 53822. Sheridan submitted an invoice for services provided for this delivery, including 47.25 hours of detention, on September 16, 2008. Then on September 8, 2008, Sheridan delivered soldiers' rations pursuant to BOL 165622NV in trailer number 53848. Sheridan submitted an invoice for this delivery on September 8, 2008. Both invoices were paid in full.

Almost four years after dropping off the trailers, on July 6, 2012, FEMA notified Sheridan that trailer 53822 was in Fort Worth, Texas, and that Sheridan needed to retrieve it. As Sheridan's driver was about to depart with trailer 53822, the security officer on site informed the driver that another Sheridan trailer had been located. It was trailer 53848. As of July 13, 2012, Sheridan had retrieved both trailers.

On August 24, 2012, Sheridan wrote to DLA by electronic mail:

We were notified on July 6, 2012 to pick up our trailers at Fort Worth, TX. When our driver arrived to pick up the trailers, he was told that they did not have any paper work to give him. Therefore we did not receive the Trailer

Release form in order to bill for detention, however we did get a confirmation via email. I have attached the email confirmation along with the paperwork where the trailers were dropped. Please advise as to how we need to handle billing for detention time.

Sheridan and DLA then exchanged several electronic mail messages wherein DLA probed Sheridan for answers as to whether and how Sheridan had sought to locate the trailers before July 2012. Sheridan asserted that it had made some telephone calls regarding the trailers, but it produced no information about the dates of those calls or the individuals who supposedly made them.

On May 30, 2013, Sheridan submitted two invoices to DLA, in the total amount of \$10,185,586.04, for detention and return charges for the two trailers. Virtually all of the amount sought was detention charges – \$365 per hour, times ten hours per day, times the number of days between drop-off and retrieval of each trailer. By e-mail message dated February 28, 2014, Sheridan offered the Government a ten-percent discount on that amount if it would make payment within thirty days. On March 28, 2014, a DLA transportation officer asked Sheridan to submit specified information and documents as a precondition to the Government’s consideration of making payment. In response, Sheridan provided some answers and some documents.

On July 15, 2014, GSA’s Transportation Audits Division denied Sheridan’s claim in its entirety, on the basis that it is barred by the statute of limitations in 31 U.S.C. § 3726(c)(2)(A) (2012).

Sheridan asked this Board on August 14, 2014, to reverse GSA’s decision and award it \$10,185,568.04 in damages.

Discussion

Section 3726 of title 31, United States Code, provides that the Administrator of General Services “shall adjudicate transportation claims which cannot be resolved by the agency procuring the transportation services, or the carrier or freight-forwarder presenting the bill.” 31 U.S.C. § 3726(c)(1). The statute contains a restriction on the making of claims: “A claim under this section shall be allowed only if it is received by the Administrator not later than 3 years (excluding time of war) after the later of” any of four specified events, of which “[t]he date of accrual of the claim” is the one relevant here. *Id.* § 3726(c)(2)(A). By regulation, the GSA Administrator has allowed “the agency where the claim arose” to be his designee for the purpose of receiving a claim within three years from one of the specified events. 41 CFR 102-118.470 (2012). A carrier or freight forwarder which disagrees with

any decision by the Administrator regarding a claim may timely ask the Board to review the decision. 41 U.S.C. § 3726(i); 41 CFR 102-118.490(b).

The parties disagree as to which of them was responsible for keeping track of the location of the trailers at issue. Sheridan contends that because the Government promised in its solicitation that “DLA will report daily to the carrier the location of the trailer,” and no such reports were ever made, the carrier did not have a duty to monitor the whereabouts of the trailers. GSA urges that because the solicitation required carriers like Sheridan which were not DTTS or Qualcomm capable to be able to report the current locations of their trailers, the tracking duty rested with the carrier.

While we may wonder why neither of the parties noticed, over a period of nearly four years, that the whereabouts of the trailers was unknown, it makes no difference to the resolution of this case which party was to blame for the predicament. If Sheridan wished to make a claim, it had to do so, under statute, not later than three years after the date on which the claim accrued – when the claim could “be definitely ascertained and set up.” *Baggett Transportation Co. v. United States*, 319 F.2d 864 (Ct. Cl. 1963); *see also American Stitching & Box, Inc.*, GSBCA 14615-RATE, 99-1 BCA ¶ 30,369. Sheridan could definitely have ascertained, on each and every day that it did not have possession of the trailers, that it had left the trailers with the Government and did not have custody of them. By Sheridan’s reckoning, this was sufficient information to trigger a claim for detention charges. The contract under which such a claim could have been made was for a limited period, however; it ended on May 31, 2009. It allowed for detention charges only through that date. Thus, if there was a basis for a claim for detention charges under the contract, it ended on May 31, 2009. Consequently, any claim for even the last contract day had to have been made no later than May 31, 2012. Sheridan did not submit any invoices for detention until May 20, 2013. Even if those invoices may be construed as a claim, they were too late to be considered.

Decision

Sheridan’s claim for detention and return charges is time-barred and, accordingly, is dismissed.

STEPHEN M. DANIELS
Board Judge