



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED: September 23, 2016

CBCA 5379

JONATHAN NOELDNER,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Jonathan Noeldner, pro se, Eau Claire, WI.

James L. Rosen, Office of the General Counsel, Department of Agriculture, San Francisco, CA, counsel for Respondent.

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

DANIELS, Board Judge.

Respondent, the Department of Agriculture, moves the Board to dismiss, for failure to state a claim upon which relief may be granted, an appeal filed by contractor Jonathan Noeldner. Respondent maintains that the claims at issue were submitted to the agency later than the time permitted by the contract. We grant the motion.

Background

The United States Forest Service, an entity within the Department of Agriculture, awarded the Whipsaw Fuelwood timber sale contract to Mr. Noeldner on January 13, 2011.

The contract permitted Mr. Noeldner to cut and remove lodgepole pine, Jeffrey pine, and white fir timber from the Inyo National Forest.

The contract included clause BT9.21, Time Limits for Submission of Claim. This clause provided:

Failure by Purchaser to submit a Claim within established time limits shall relinquish the United States from any and all obligations whatsoever arising under the contract or portions thereof. Purchaser shall file such Claim within the following time limits:

. . . .^[1]

(d) . . . Purchaser must file any Claim not later than 60 days after receipt of Contracting Officer written notification that timber sale is closed.

On July 1, 2015, Mr. Noeldner asked the contracting officer by e-mail, “[W]hen will I be able to submit claims against the [Forest Service], per contract documents, on this contract?” The contracting officer replied later that day, also by e-mail, “[Y]ou may submit disputed issues you have with the Forest Service at any time. Once the determination related to the Whipsaw Sale default is settled, a sale closure letter will be issued to you and the normal submission of claims timeline will then be in effect.”

By letter dated July 15, 2015, the contracting officer wrote to Mr. Noeldner:

This sale has been closed on our records. . . . Any claim or reservation of claim must be filed in accordance with contract provisions BT9.2 – Disputes and BT 9.21 – Time Limits for Submission of Claim, with the Forest Supervisor. Failure to do so shall relinquish the United States from any and all obligations whatsoever arising under this contract or portion thereof.

Mr. Noeldner signed a certified mail receipt for this letter on July 27, 2015. Consequently, in accordance with clause BT9.21, he had until sixty days later – until September 25, 2015 – to file a claim.

¹ Paragraphs (a), (b), and (c) contain time limits for filing claims regarding road construction and payment and cutting units. The Forest Service says that “[b]ecause all of Appellant’s claims were untimely even under the more generous standard of BT9.21(d), there is no reason to conduct a separate analysis for claim items that might fall under BT9.21(c).”

By letter dated March 16, 2016,² which was received by the contracting officer on March 23, 2016, Mr. Noeldner made eight separate claims for money regarding the contract. The contracting officer responded on March 24, 2016:

As stated in Provision BT9.21, “Failure by Purchaser to submit a Claim within established time limits shall relinquish the United States from any and all obligations whatsoever arising under the contract or portions thereof.” Therefore your claim will not be considered any further because it did not meet this time limit.

Mr. Noeldner received the contracting officer’s letter on March 29, 2016, and filed an appeal from it on June 24, 2016.

Discussion

The Contract Disputes Act provides that “in general,” “[e]ach claim by a contractor against the Federal Government relating to a contract . . . shall be submitted within 6 years after the accrual of the claim.” 41 U.S.C. § 7103(a)(4)(A) (2012). Parties are free, however, to “agree[] to terms that would further expedite the claim resolution process.” *Do-Well Machine Shop, Inc. v. United States*, 870 F.2d 637, 641 (Fed. Cir. 1989). “The United States can enforce the waiver of, or agreement to, a given limitations period with the same force as a private party.” *Id.*

Here, the parties agreed in clause BT9.21 of their contract that if the contractor did not submit a claim within “60 days after receipt of Contracting Officer written notification that timber sale is closed,” he would “relinquish the United States from any and all obligations whatsoever arising under the contract or portions thereof.” Although Mr. Noeldner may not like this limitation now, he in submitting his bid “expressly adopt[ed] the terms of . . . the sample contract,” which included the clause, “as material parts of [his] offer.” Clause BT9.21 has consistently been enforced by this Board, its predecessor Department of Agriculture Board of Contract Appeals, and the Court of Federal Claims. *Duffy Inc. v. Department of Agriculture*, CBCA 1369, 09-2 BCA ¶ 34,250; *Thomas Creek Lumber & Log Co.*, AGBCA 2005-132-1, 06-1 BCA ¶ 33,283; *Buse Timber & Sales, Inc.*, AGBCA 90-168-1, et al., 94-1 BCA ¶ 26,456 (1993); *Stone Forest Industries, Inc. v. United States*, 26 Cl. Ct. 410, 414 (1992) (“The rule of law stated in *Do-Well* is binding on this court.”).

² The letter contains a certification which says that it was made on March 23, 2016, but was signed by Mr. Noeldner and two witnesses on March 22, 2016.

The clause is enforced because “[t]he consequences of failing to comply with [the] time limitation provision[] are explicit in the contract language.” *Duffy*, 09-2 BCA at 169,253. As explained in *Riggs National Bank of Washington, D.C. v. General Services Administration*, GSBCA 14061, 97-1 BCA ¶ 28,920, at 144,179:

Generally, [time] limitations imposed by contract provisions should be applied liberally; if the contractor fails to meet such a limitation, the provision should be enforced only where the Government demonstrates that it has been prejudiced by the failure. Where a contract clearly states that the contractor will lose rights if it does not make a submission within a prescribed period of time, however, the limitation should be strictly enforced. This guidance effectively meshes the teaching of *Hoel-Steffen [Construction Co. v. United States]*, 456 F.2d 760 (Ct. Cl. 1972)] and decisions following it with the general rule that “agreed-upon contract terms must be enforced” and “[c]ontracting parties must be held to their agreements.” *Madigan v. Hobin Lumber Co.*, 986 F.2d 1401, 1403-04 (Fed. Cir. 1993) (citing numerous decisions).

As a party to the Whipsaw Fuelwood timber sale contract, Mr. Noeldner agreed that if he did not submit a claim within sixty days of the date on which he received the contracting officer’s written notification that the timber sale was closed, the consequence would be clear: he would “relinquish the United States from any and all obligations whatsoever arising under the contract or portions thereof.” He submitted his claims far more than sixty days after he received the notification. The contracting officer responded properly, in accordance with the contract, that the claims could not be considered.

Mr. Noeldner maintains, as he wrote in an e-mail message to the contracting officer on September 12, 2015, that he believed the sale had been closed prematurely. In his opinion, the sale should not have been considered closed until he had been paid the balance of his performance bond and “for costs incurred by the malicious, biased, and unlawful activities employed by the [Forest Service].”³ Whether Mr. Noeldner’s view is correct or not, the fact is that the contracting officer closed the sale when he did. Under clause BT9.21, and

³ The Department of Agriculture notes that the contracting officer’s letter of July 15, 2015, included the statement, “[Y]our remaining unencumbered balance and your performance bond deposit shall be applied towards . . . damages. A refund of the balance in the amount of \$935.67 will be processed.” The contracting officer later told Mr. Noeldner that this money had been offset against a debt the contractor owed to the Government. Whether the Forest Service ever paid Mr. Noeldner \$935.67 or any other amount regarding his performance bond deposit is irrelevant to our decision.

as cautioned in the contracting officer's July 1, 2015, e-mail message and more pointedly in his July 15, 2015, notification that the sale was closed, Mr. Noeldner was required by the clear terms of the contract to submit whatever claims he might have had within sixty days of the date on which he received the notification. He did not meet the deadline specified in clause BT9.21 and must therefore suffer the consequence that was expressly set forth in the clause.

Decision

The Department of Agriculture's motion is granted. The appeal is **DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.**

STEPHEN M. DANIELS
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

ALLAN H. GOODMAN
Board Judge