



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: April 29, 2016

CBCA 4196

AUTOFLEX, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Luis D. MacDonald, President of AutoFlex, Inc., Baltimore, MD, appearing for Appellant.

Harold W. Askins III, Office of Regional Counsel, Department of Veterans Affairs, Charleston, SC, counsel for Respondent.

Before Board Judges **SOMERS**, **VERGILIO**, and **DRUMMOND**.

VERGILIO, Board Judge.

On October 9, 2014, the Board received from AutoFlex, Inc. (contractor) a notice of appeal contesting the denial by a contracting officer of its claim to recover \$2880 under a contract with the Department of Veterans Affairs (agency). The agency had obtained quotations to lease a vehicle for a twelve-month period. The agency deemed the contractor's quotation to be in its best interest. By signing a bilateral contract, the contractor accepted the agency's offer to lease a specific make and model vehicle for twelve months at \$355 per month. The agency placed a purchase order for the lease under a federal supply schedule contract between the contractor and the General Services Administration (GSA). The contract and order contain no option year pricing and do not mention an extended performance period. The parties performed for the twelve months; the agency made monthly

payments. The contractor contends that the agency selected a monthly price that was based upon a three-year performance period and that the agency breached the contract by not exercising an option. The contractor seeks to be paid the difference between the contract price and its allegedly quoted price for a three-year contract.

The parties have filed cross-motions for summary relief, each claiming entitlement to relief. The Board makes findings based upon undisputed facts relied upon by the parties and concludes that the contract is clear and unambiguous. The contractor accepted a contract for a twelve-month period at a monthly price of \$355. The contract does not contain option year pricing. The intent and assumptions of the contractor, not expressed in the written agreement, do not provide a basis for relief. The contractor is not entitled to payment in addition to the fixed amounts identified in the contract. Accordingly, the Board denies the motion of the contractor, grants the motion of the agency, and denies the appeal.

Findings of Fact

1. The agency issued a statement of work indicating its need to lease a vehicle for a stated performance period of September 26, 2011, through September 25, 2012. Exhibit 1 (all exhibits are in the appeal file). The agency issued a request for quotations for monthly pricing and received quotations in response. Exhibits 2-3.

2. The contractor submitted an electronic quote with a comment: “Monthly Lease Rate of \$355 is based on SDVOSB [small disadvantaged veteran-owned small business] support of the multi-year mission of your” program. Exhibit 3.

3. In response to the quotations received, the agency selected the contractor. On the same day, the parties entered into a bilateral contract and the agency placed a purchase order for the lease of the vehicle under the contractor’s federal supply schedule contract. Both the contract and purchase order specify that the period of the lease is for twelve months (for the period of September 26, 2011, through September 25, 2012) at the monthly unit price of \$355 for a total amount of \$4260. Neither makes reference to an option period or a pricing sheet of the contractor. Exhibits 4-5.

4. The contractor provided the vehicle. For the twelve-month contract period, the agency paid the monthly price. Exhibit 6. The agency did not retain the vehicle beyond the twelve month period.

5. By letter dated April 2, 2013, the contractor submitted a claim for \$2880 “in settlement of early termination of this contract.” The contractor contends that it submitted an original quotation for the lease of the vehicle under its schedule contract based upon an

agency request for twelve, twenty-four, and thirty-six month leasing, with monthly pricing for an in-stock vehicle of \$595, \$445, and \$355, for the respective lease periods. The contractor has noted that its underlying schedule contract contains an annotation: “Any Lease terminated for budgetary reason will be charged the applicable annual lease charge as listed for 12 and 24 month terms above upon the end of the lease term.” Exhibits 7 at 3, A. The claim is “based upon your initial intent to exercise the 3-year option on this contract as evidenced by your selection of the 36-month payment of \$355.00 per month as detailed on our lease proposal[.]” The contractor seeks payment for the difference between the one-year and three-year prices in the identified proposal. Exhibit 7 at 1. The claim amount reflects the monthly difference ($\$240 = \$595 - \$355$) times twelve months.

6. By issuance dated September 16, 2014, a contracting officer denied the claim. Exhibit 8. The contracting officer determined that the acquisition was for the lease of one vehicle for a period of twelve months. The parties each signed the contract for the one-year delivery period at the given price. Each party had satisfied its contractual obligations; the contractor had provided the vehicle, the agency had paid the stated price each month. Exhibit 8 at 1-2.

7. On October 9, 2014, the contractor filed its notice of appeal at the Board.

Discussion

The parties agree that their motions should be treated as cross-motions for summary relief. The agency contends that the solicitation is clear, the contractor unequivocally accepted the terms and conditions of the contract and purchase order which are similarly clear, and both parties have fully performed their legal obligations. Therefore, the agency concludes that the contractor is entitled to no further relief under the contract. The contractor asserts agency breach, contractor intent, and other theories in support of its claim.

The contractor seeks \$2880 plus interest of \$464. The contractor contends that the agency breached the contract, as demonstrated by its failure to act in good faith, when it requested and accepted a discounted thirty-six month multi-year pricing solution, but only funded the initial twelve-month period of performance. The contractor maintains that the terms of its quotation are clear, and that it was led to believe that the agency would continue the contract for three years.

A party seeking summary relief bears the burden of establishing the absence of any genuine issue of material fact. All significant doubt over factual issues must be resolved in favor of the party opposing summary relief. The standards are well-known and not here in

dispute. *Systems Management & Research Technologies Corp. v. Department of Energy*, CBCA 4068 (Apr. 6, 2016).

As specified in applicable regulation:

A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

48 CFR 13.005 (2013).

The agency acted pursuant to the regulation. It received the contractor's quotation and offered to lease the vehicle for twelve months at a monthly price of \$355. The contractor accepted that offer by signing a bilateral contract. Thereafter, the agency placed a purchase order under the contractor's schedule contract for the same period and at the same monthly rate. The parties fulfilled the contract requirements. The plain language of the contract controls the resolution of this dispute. *Systems Management & Research Technologies Corp. v. Department of Energy*, CBCA 4068 (Apr. 6, 2016).

The contractor raises various positions which do not demonstrate the possibility of relief. The agency did not breach or terminate the contract or fail to fulfill its obligations for budgetary reasons. To the contrary, the agency paid for each of the twelve months in the period of performance and did not contract to lease a vehicle beyond the twelve-month period. The contractor's annotation in its electronic bid that the pricing is based upon "support of the multi-year mission" does not alter the price or term of the actual contract. That language does not convey that pricing is tied to a lease of longer than twelve months. The lease spanned portions of two years; so it was multi-year. The contractor supported the multi-year mission of the agency by satisfying the lease terms and conditions for the period set forth in the lease. The language in the electronic quote does not tie the \$355 monthly fee to a thirty-six month performance period. Moreover, the intent of the contractor to price its rate based upon a thirty-six month lease, although not conveyed in the electronic quote, does not overcome the actual language of this contract with a fixed term and monthly price as accepted by the contractor. The terms and conditions of the schedule contract do not alter the express terms and conditions of the contract and purchase order here at issue. A contractor can accept an order at a price below what may be found in a schedule contract. 48 CFR 8.404, 8.405.

While the GSA schedule contract may recognize option periods, the exercise or not by GSA of an option to extend the schedule contract does not alter the contract at issue here. The contract contains no options or option year pricing. The agency could not breach the contract by failing to exercise an option that did not exist.

Decision

The Board denies the contractor's motion for summary relief, grants the agency's motion for summary relief, and **DENIES** the appeal.

JOSEPH A. VERGILIO
Board Judge

We concur:

JERI K. SOMERS
Board Judge

JEROME M. DRUMMOND
Board Judge