



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

ORDER ON PENDING MOTIONS: March 8, 2018

CBCA 5911

J.R. MANNES GOVERNMENT SERVICES CORP.,

Appellant,

v.

DEPARTMENT OF JUSTICE,

Respondent.

Jerry R. Mannes II, President, J.R. Mannes Government Services Corporation, Holland, MI, appearing for Appellant.

Jack R. Cordes, Jr., Office of the General Counsel, Federal Bureau of Investigation, Department of Justice, Washington, DC, counsel for Respondent.

SOMERS, Board Judge (Chair).

ORDER

Currently pending before us are (1) appellant's motion to compel, (2) appellant's request for permission to submit a reply brief, (3) respondent's motion to supplement the appeal file, and (4) appellant's request for an extension of the deadline to submit its record submission. We grant appellant's request for permission to submit a reply brief (previously filed on March 7, 2018), respondent's motion to supplement the appeal file, and appellant's request for an extension of the deadline for submitting its record submission, which is now due today, March 8, 2018. We deny appellant's motion to compel.

Background

On February 12, 2014, the Federal Bureau of Investigation (FBI) entered into a blanket purchase agreement (BPA), known as the Solutions for Administrative and Program Support (SOAPS), with J.R. Mannes Government Services Corporation (J.R. Mannes). The FBI awarded task order 36 (TO 36) under the BPA to J.R. Mannes. TO 36 was a multi-year contract.

After exercising the second year option in April 2017, the contracting officer de-obligated the funds for the task order, and a second contracting officer terminated the task order for convenience. J.R. Mannes submitted a claim for lost profits for the second year option. When the contracting officer failed to issue a final decision, J.R. Mannes appealed to the Board.

The Clerk of the Board docketed appellant's notice of appeal and complaint on November 6, 2017. On December 7, 2017, J.R. Mannes asked for expedited disposition of its case under Rule 52 (48 CFR 6101.52 (2017)) which started the 120 day clock for decision under Board Rule 52(d). The parties agreed to serve written discovery no later than February 6, 2018, with responses due no later than fifteen days after service, and to submit the case on the record by March 6, 2018.

On January 29, 2018, J.R. Mannes served twenty-one interrogatories, thirty requests for admissions, and eight requests for production of documents, and issued notices for multiple depositions. The FBI served its objections on J.R. Mannes on February 13, 2018, together with fourteen pages of responses to the discovery requests. J.R. Mannes moved to compel responses to one interrogatory and request for admission, and to compel the testimony of a contract employee.

Discussion

Although this case is proceeding on an expedited basis, the discovery rules apply. For example, appellant is required to comply with Rule 8(a), which provides that "except for joint motions by the parties, all motions must represent that the moving party has attempted to discuss the grounds for the motion with the non-moving party and tried to resolve the matter informally."

J.R. Mannes filed its second motion to compel on March 1, 2018, after close of business at the Board. We received J.R. Mannes's motion on March 5, 2018.¹ J.R. Mannes did not make the Rule 8(a) representation that it had attempted to discuss the grounds for the motion with respondent, or that it made any effort to resolve the matter informally. On that basis alone, we could deny the motion to compel.

Even so, we have decided to address the issues raised in the motion as part of our greater obligation to assist the parties to resolve the case as promptly as practicable. *LFH, LLC v. General Services Administration*, CBCA 395, et al., 07-1 BCA ¶ 33,537, at 166,141. In deciding this motion, we consider J.R. Mannes's motion, respondent's opposition, and J.R. Mannes's reply. After reviewing all of the submissions, as well as appellant's original claim, we are unconvinced that appellant has shown that its discovery requests are "relevant to the subject matter involved in the pending case" or "relate[] to a claim of a party." Rule 13(b).

Appellant asks us to compel respondent to answer interrogatory request no. 13. This interrogatory seeks, in part:

a list of SOAPS contractors who submitted timely proposals in response to TO 83 and communications regarding the decision not to award a contract. If the decision not to award TO 83 came after the proposals were evaluated, provide the evaluation ratings of the competitors.

Appellant asserts that it needs this information to establish a "pattern of bias" against the company. In appellant's July 2017 claim, however, it does not allege a "pattern of bias." Appellant's claim simply asked for

lost profits on contract number DJF-14-1200-D-0006515[,] also known as Task Order 36 under the FBI SOAPS Blanket Purchase Agreement. The FAR makes provisions for contractors to file claims for lost profits on Firm Fixed

¹ The Board received J.R. Mannes's motion by email to the Board after 4:30 p.m., Eastern Time, on March 1, 2018. Due to the closure of the Federal Government in the Washington, D.C., metropolitan area, the Board docketed the motion on March 5, 2018, the next working day. *See* Board Rule 1(b)(5)(i) ("Any document, other than a notice of appeal or an application for award of fees and other expenses, is filed when it is received by the Office of the Clerk of the Board during the Board's working hours"), and (iii) ("All email filings received by 4:30 p.m., Eastern Time, on a working day will be considered to be filed on that day. Email filings received after that time will be considered to be filed on the next working day.").

Price contracts that are terminated for the convenience of the government. Our claim is in the amount of \$52,139.00, which represents the profits we would have enjoyed for the option year 2 (OY2) Period of Performance (PoP) plus the modified extension, had the contract not been prematurely truncated.

Appellant's claim, limited in scope, focuses exclusively on entitlement to lost profits due to the termination for convenience of TO 36. It does not mention TO 83 (a different task order). It does not allege bias or bad faith. Appellant is only entitled to seek information that is relevant or reasonably calculated to lead to the discovery of admissible evidence. Interrogatory no. 13 fails to accomplish that.

In request for admission no. 23, Appellant asks the FBI to

[a]dmit that [an FBI employee's] reply to a contract employee's inquiry as to whether there was a problem on the contract after he was instructed to train his replacement was "Did you know your company is suing the FBI."

The FBI denied the request because the employee does not recall the conversation. Appellant argues that the FBI's response is evasive. We see no evasion. If appellant believed that the employee had more information that might be relevant or was reasonably calculated to lead to the discovery of admissible evidence, it could have taken the government employee's deposition and attempted to refresh her memory about the conversation. It did not do so.

Finally, appellant asks us to compel a contractor employee to answer a series of questions. As the FBI correctly notes, the only way for the Board or the FBI to compel the testimony of this contractor employee would be to issue a subpoena for testimony pursuant to Rule 16. Appellant did not request a subpoena. Our rules provide no other method to compel the testimony of a non-government witness.

Decision

Appellant's request for permission to submit a reply brief is **GRANTED**. Respondent's motion to supplement the appeal file is **GRANTED**. Appellant's request for an extension of the deadline for submitting its record submission until March 8, 2018, is **GRANTED**. Appellant's motion to compel is **DENIED**.

JERI KAYLENE SOMERS

Board Judge