



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR SANCTIONS DENIED: December 2, 2019

CBCA 5997, 6464

SBC ARCHWAY HELENA, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Diana Parks Curran and Hadeel N. Masseoud of Curran Legal Services Group, Inc.,
Johns Creek, GA, counsel for Appellant.

Justin S. Hawkins, Office of General Counsel, General Services Administration,
Washington, DC, counsel for Respondent.

Before Board Judges **VERGILIO**, **KULLBERG**, and **CHADWICK**.

VERGILIO, Board Judge.

The lessor, SBC Archway Helena, LLC, moves to impose sanctions on the General Services Administration (agency). In these cases, the lessor contends that the agency is solely responsible for a delay of 277 days in issuing the notice to proceed, while the agency maintains that the lessor bears responsibility for some of the delay. The lessor served discovery upon the agency. According to the lessor, the agency provided excuses as to why it could not produce various documents, with some documents being provided only after depositions had been taken. The motion, which chastises the agency for supposed tactics in delaying full responses, focuses upon two documents:

1. An email from [the] Contracting Officer . . . stating in writing to the tenant agency that Appellant gave it more pricing information than the Government asked for in its TICS [tenant improvement costs] pricing submitt[al], thereby contradicting GSA's contention that Appellant was partially responsible for the Delay. (Exhibit 13); and
2. A critical email thread illustrating the Government's responsibility in causing the Delay, whereby [the] Contracting Officer . . . admits:

At this point as a Contracting Officer, I would be extremely hard pressed to defend the US Government against any claim by [lessor] as the lessor.

In the motion, the lessor characterizes these emails to be of a “damning nature . . . in placing the responsibility in causing the Delay squarely on the Government,” and concludes that the agency intentionally has withheld the documents in an effort to obstruct and conceal agency liability in causing the delay. The lessor seeks a variety of sanctions, to include: taking facts pertaining to the matter in dispute to be established for the purpose of the case in accordance with the lessor's contentions, particularly that the agency is solely responsible for the delay; forbidding the agency from challenging the accuracy of any evidence presented by the lessor, and refusing to allow the agency to support or oppose any claims or defenses.

The lessor highlights various portions of the first referenced email. While the writer asserts that the lessor provided all information that is in a typical tenant improvement costs table, albeit in a different format, the language is silent regarding any actual or potential lessor delay that may exist. The lessor does not connect this email to the agency's basis or bases supporting lessor-caused delay; i.e., the agency may be able to demonstrate lessor-caused delay even if the lessor provided additional pricing information.

Similarly, in the second referenced email, the highlighted language does not state that the agency is solely responsible for the delay. The sentence is not an admission that the agency may be liable for any and all claims by the lessor against the agency.

The Board reviews *de novo* any findings made by a contracting officer. These bits of information represent no smoking gun as suggested by the lessor. The lessor blows out of proportion the significance of such statements. The lessor has failed to establish a basis to impose the sanctions sought.

Decision

The Board **DENIES** the lessor's motion to impose sanctions.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

We concur:

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge