



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: August 24, 2020

CBCA 6264, 6279, 6284

CARMAZZI GLOBAL SOLUTIONS, INC.,

Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

J. Russell Cunningham of Desmond, Nolan, Livaich & Cunningham, Sacramento, CA, counsel for Appellant.

Dorothy M. Guy, Brandon Dell'Aglio, Tal Kedem, and Alice M. Somers, Office of the General Counsel, Social Security Administration, Baltimore, MD, counsel for Respondent.

Before Board Judges **SOMERS** (Chair), **BEARDSLEY**, and **VERGILIO**.

VERGILIO, Board Judge.

The Social Security Administration (agency) moves for summary judgment in these three appeals involving Carmazzi Global Solutions, Inc. (contractor). The contractor challenges the validity of each termination for cause. The agency maintains that undisputed material facts demonstrate that the contractor failed to perform each commercial item contract; that is, the contractor breached the contracts and task orders by not providing verbatim hearing reporters (VHR), and each basis raised by the contractor in its claims and answers is factually unsupported in the record or fails to invalidate the terminations for cause.

The contractor failed to provide reporters under the three contracts and task orders, before, during, and after the agency had identified deficiencies and issued notices to cure and to show cause. The contractor was in default of each contract and task order as found by the agency, such that the terminations for cause were justified. The contractor bears the burden to demonstrate that its failure to perform was excusable; that is, arose from causes beyond its control and without its fault or negligence. In its answer to the agency's complaint, the contractor provided various explanations to excuse its failure to perform. However, it has failed to respond to the agency's motion or identify genuine issues of material fact.

The agency sufficiently has addressed the failures of the contractor to establish a plausible basis to alter any of these terminations for cause. The Board need not elaborate, given the contractor's silence and failure to pursue any theory that could establish a basis to invalidate any of these terminations. It is not for the Board to speculate upon the facts, if any, the non-movant may contest, or any factual and legal theories the contractor might ultimately seek to pursue. The Board grants the agency's motion, and denies the appeals.

Background

The agency awarded multiple commercial item contracts and issued task orders thereunder to the contractor to provide reporters at disability appeal hearings before administrative law judges. At issue here are three contracts and related task orders for Detroit, Michigan (CBCA 6264); Tallahassee, Florida (CBCA 6279); and Dallas, Texas (CBCA 6284). After a transition period under each contract, the contractor was obligated to provide 100% coverage for hearings and provide assurances ahead of each hearing that a reporter would be present. The contracts contained a Termination for Cause clause, 48 CFR 52.212-4(m) (2018), that permitted the agency to terminate each contract or task order if the contractor was in default.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

The contract's definition of "excusable delays" provided an exception to such a termination: "The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence" 48 CFR 52.212-4(f).

After the transition period, the contractor did not affirm coverage or provide 100% coverage under these contracts and task orders, before or after receiving notices of deficiencies, cure notices and notices to show cause. In its responses to the cure notices, the contractor proposed numerous actions, including: holding a joint meeting between executives of each contracting party to identify problems; identifying and agreeing upon which of the various contracts would be subject to 100% compliance; holding a series of meetings and conference calls to address progress, status, any new/old issues, and milestones; requiring the agency to provide advance payment with negotiated repayment terms; allowing the contractor six months to reach 100% compliance (with interim goals of 80% compliance in four months and 90% compliance in five months); requiring the agency to pay invoices within fifteen days of submission and establishing a formal invoice certification policy; requiring the agency to provide security and suitability clearances within four weeks of receipt of submissions; and committing to weekly status reporting and calls. Excusable delays are not identified. Instead, the contractor sought to place extra-contractual demands upon the agency but did not commit to providing 100% as required under the contracts. Asking for extra-contractual concessions by the agency was not in keeping with the terms and conditions of the contracts. The agency found performance unacceptable and assurances inadequate; the agency terminated for cause each of these contracts because of contractor default. The undisputed facts in the record support the agency's conclusions and determinations.

Discussion

As detailed in Board Rule 8(f) (48 CFR 6101.8(f) (2019)):

Summary judgment motions. A party may move for summary judgment on all or part of a claim or defense if the party believes in good faith it is entitled to judgment as a matter of law based on undisputed material facts. In deciding motions for summary judgment, the Board looks to Rule 56 of the Federal Rules of Civil Procedure for guidance.

(1) Statement of undisputed material facts. The movant shall file with its summary judgment motion a separate document titled, "Statement of Undisputed Material Facts." This document shall set forth facts supporting the motion in separate, numbered paragraphs, citing appeal file exhibits, admissions in pleadings, and/or evidence filed with the motion.

(2) Statement of genuine issues. The opposing party shall file with its opposition a separate document titled, “Statement of Genuine Issues.” This document shall respond to specific paragraphs of the movant’s Statement of Undisputed Material Facts by identifying material facts in genuine dispute, citing appeal file exhibits, admissions in pleadings, and/or evidence filed with the opposition.

The agency filed and served a motion for summary judgment and a statement of undisputed material facts. The agency maintains, with factual and legal references, that its terminations for cause were justified and supported based upon undisputed material facts, and that the undisputed material facts fail to demonstrate that a valid basis has been raised and supported that would excuse any of these default determinations.

The contractor has neither filed an opposition to the motion nor identified any genuine issue of material fact. Its silence is detrimental to its case, to the extent that the agency has established undisputed facts and legal bases for relief, while the contractor offers no response. Rule 23(b) (briefs “shall cite record evidence for factual statements and legal authority for legal arguments”).

It has been said that “nothing will come of nothing,” a phrase that aptly applies to this contractor and its silence by its non-response to the agency’s motion and proposed findings of fact. Akin to the situation in *Magwood Services, Inc. v. General Services Administration*, CBCA 5588, 18-1 BCA ¶ 37,057, the contractor did not seek more time to respond, and the Board does not here expand the time for the contractor to submit a response to the agency’s motion. The agency contends that the contractor was in default of each contract by failing to provide reporters or demonstrate that it could fulfill its contractual obligations. The undisputed facts proposed with citations to record evidence accompanying the agency’s motion support the agency’s position. In light of the specifics of the agency’s motion and statement of undisputed material facts, the Board does not speculate as to the contractor’s theories of excusable delays. In response, the contractor has not identified any disputed fact, or provided proposed facts and associated legal theories, with record support, that could excuse its non-performances. The record, viewed for purposes of resolving the motion for summary judgment, establishes no excusable delay.

Decision

The Board grants the agency's motion for summary judgment and **DENIES** the appeals.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

We concur:

Jeri Kaylene Somers
JERI KAYLENE SOMERS
Board Judge

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge