UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 18, 2021

CBCA 6893

ALLIED MERIDIAN FUNDING LLC,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Robert D. Albright, Jr., Managing Principal and Secretary of Allied Meridian Funding LLC, Minnetonka, MN, appearing for Appellant.

Adria Greene, Office of the General Counsel, Department of Agriculture, Atlanta, GA, counsel for Respondent.

Before Board Judges **SOMERS** (Chair), **DRUMMOND**, and **RUSSELL**.

SOMERS, Board Judge.

The Department of Agriculture Forest Service entered into two contracts with Genesis International Management Group LLC (Genesis) to provide staffing services. Genesis ultimately assigned its right to payments under both contracts to appellant, Allied Meridian Funding LLC (Allied Meridian). This appeal concerns payments made to Genesis under only one of these contracts. We deny the appeal because appellant cannot support its claim of entitlement.

Background

On June 18, 2015, the Government entered into an indefinite delivery, indefinite quantity contract with Genesis for temporary personnel staffing under contract number AG-4670-C-15-0102 (contract 4670). On October 6, 2015, Genesis executed an assignment of "all moneys due or to become due" to Genesis under contract 6470 to appellant. Appellant notified the contracting officer of the assignment on October 7, 2015. The contracting officer issued a contract modification on October 8, 2015, to incorporate the assignment of claims.

On August 29, 2016, the Government entered into another contract with Genesis for staffing services under AG-4568-C-16-0085 (contract 4568). Genesis executed an assignment of "all moneys due or to become due" to Genesis under contract 4568 to appellant on October 10, 2016. However, the document was not notarized until December 1, 2016.

The Government continued to pay Genesis all amounts due under contract 4568. On December 1, 2016, Genesis filed with the contracting officer the signed, notarized assignment relating to contract 4568; and on December 2, 2016, the contracting officer modified the contract to incorporate the assignment of claims. In a declaration dated February 17, 2021, the contracting officer stated:

> I had no knowledge, actual or constructive, of the Assignment of Claim relating [sic] Contract 4568 prior to my receiving it on December 1, 2016. I did not receive any correspondence, written or verbal, or any other communications about the Assignment of Claim relating [sic] Contract 4568 prior to December 1, 2016.

On October 25, 2019, appellant submitted a claim for $268,760.01, citing entitlement under both contracts. The contracting officer found entitlement in part, stating that "[i]t is my determination that the information submitted in [Allied Meridian's] claim, and due diligence conducted investigating applicable invoices and Task Orders, only supports a claim totaling $46,072.11."

Allied Meridian appealed, seeking payment of all disputed invoices. Appellant states that it is entitled to payment for all invoices financed by it between October 10, 2016, and December 2, 2016, totaling $86,840.83.

Discussion

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The moving party has the initial burden of informing the tribunal of the basis for its motion and identifying those portions of the pleadings, depositions and affidavits, admissions, and answers to interrogatories, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Only disputes over facts that might affect the outcome of the case under governing law will properly preclude the entry of summary judgment. *Anderson*, 477 U.S. at 248. The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute as to any material fact, and all justifiable inferences must be made in favor of the non-moving party. *Celotex*, 477 U.S. at 322-23. In considering summary judgment, the tribunal will not make credibility determinations or weigh conflicting evidence. *Anderson*, 477 U.S. at 249.

Allied Meridian contends that the Government wrongly continued to pay Genesis after the assignment. However, Allied Meridian did not provide any evidence that it notified the contracting officer of the assignment before December 1, 2016. By statute and regulation, a contractor may assign any amounts due from the Federal Government under a contract to a bank, trust company, Federal lending agency, or other financing institution. 41 U.S.C. § 6305(b) (2012); *see also Mayberry Enterprises, LLC v. Department of Energy*, CBCA 5961, 20-1 BCA ¶ 37,616. Among other requirements, the assignee must "file written notice of the assignment and a true copy of the instrument of assignment with . . . the contracting officer or head of the officer's department or agency . . . the surety on any bond connected with the contract . . . and the disbursing officer, if any, designated in the contract to make payment." 41 U.S.C. § 6305(b)(6); *see* 48 CFR 32.802(e) (2016). The Government may "assent to and recognize an assignment where it seems appropriate." *Mayberry* (quoting *G.L. Christian & Associates v. United States*, 312 F.2d 418, 423 (Ct. Cl. 1963)).

Thus, in compliance with both statutory and regulatory requirements, the Government will not recognize an assignment until the assignee files the written notice of the assignment and a true copy of the instrument of assignment with the contracting officer, among others. In this case, the evidence is that Allied Meridian did not provide written notice of assignment to the Government and that Genesis provided written notice of the assignment after it was notarized on December 1, 2016. Upon receipt, the Government processed the assignment and modified the contract. The Government paid all invoices submitted after the contract modification to Allied Meridian.

Appellant asserts, without evidence, that "'the totality of the circumstances' . . . argues that, at least Appellant, through its servicing agent, believed Respondent had been notified

of the assignment well before December 2, 2016. The "belief" of the servicing agent, without more, does not meet the statutory and regulatory prerequisites for an effective assignment.

Decision

The appeal is **DENIED**.

Jeri Kaylene Somers
JERI KAYLENE SOMERS
Board Judge

We concur:

Jerome M. Drummond
JEROME M. DRUMMOND
Board Judge

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge