



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: December 2, 2021

CBCA 7091

PHOENIX MANAGEMENT, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Johnathan M. Bailey and Kristin E. Zachman of Bailey & Bailey, P.C., San Antonio, TX, counsel for Appellant.

Alexander C. Vincent, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **LESTER**, **RUSSELL**, and **SULLIVAN**.

**SULLIVAN**, Board Judge.

Phoenix Management, Inc. (Phoenix) executed a firm-fixed-price contract with the General Services Administration (GSA) to provide building maintenance and custodial services at two federal buildings in Austin, Texas. In October 2020, the GSA contracting officer notified Phoenix that GSA would withhold a portion of the monthly payment for September 2020 because Phoenix reported staffing levels that were lower than it had proposed. Phoenix submitted a claim seeking payment of the amounts withheld. When its claim was denied, Phoenix timely filed its appeal with the Board.

The parties filed cross-motions for summary judgment, seeking a decision on whether GSA's actions were proper. Based upon the terms of the contract, we determine that GSA properly withheld the amounts.

### Background

Pursuant to the contract executed in May 2020, Phoenix agreed to provide custodial, grounds maintenance, and operations and maintenance services for a monthly fee. Appeal File, Exhibit 7 at 274-75.<sup>1</sup> The monthly price in the base year was \$98,592.60. *Id.* at 274. The monthly price included "pricing for services specified in the solicitation. This is a Firm Fixed Price contract and will not be changed unless there is a change in the scope of work." *Id.* at 275.

### Staffing Requirements

Phoenix was required to staff the contract in accordance with its proposal. This requirement was stated in four different places in the contract. In section B, the contract advised that "[s]taffing levels proposed and accepted at the time of award shall not be reduced through the life of the contract. At the end of each contract year, and at the request of the contractor, GSA will consider a request from the contractor for a reduction in staffing, and [a reduction] will be based on contractor performance." Exhibit 7 at 275. In the statement of work (SOW), Phoenix was told to follow the staffing plan it submitted in its proposal:

#### C.1.2 Personnel

The Contractor shall adhere to the submitted staffing plan and subcontractor plan that was submitted prior to award as part of the Bid proposal. Contractor shall submit staffing/subcontractor plan that provides sufficient numbers of staff at the various levels of expertise to ensure all scheduled and unscheduled services are performed and conditions are maintained to avoid any disruption to the tenant. Any changes to the proposed staffing levels, qualifications of proposed staff or key personnel, or the areas of expertise or disciplines of the proposed staff shall be submitted for review and approval from the [contracting officer] or their designee.

*Id.* at 280.

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<sup>1</sup> All exhibits are in the appeal file, unless otherwise indicated.

The contract incorporated the solicitation by reference. Exhibit 7 at 276. A provision in the instructions for offerors (Section L) stated that offerors would be bound to provide the staffing levels set forth in the management plan worksheet that they were to complete with their proposals:

#### L.5.1.2.3 Additional information regarding Management Plan Worksheet

The staffing/labor mix proposed in the Management Plan Worksheet **must** be adhered to for the Base year period of performance. The offeror may request an annual review of the labor mix **60** days prior to issuance of the first Option Period. Any requests for changes to the Management Plan Worksheet may be submitted and considered at that time. Any approved adjustment to the labor mix will not result in an increase in price. However, any request to reduce manpower may result in a lower price to be negotiated at the time of request. Any deviation from the accepted/approved Management Plan Worksheet may result in deductions.

Exhibit 2 at 208 (emphasis in original). In response to this solicitation requirement, Phoenix submitted a management plan worksheet that showed that Phoenix planned to employ 15.1 full-time equivalents (FTEs) in performance of the contract. Exhibit 5 at 239-40; Exhibit 6 at 265-66.

GSA responded to several questions about the solicitation, including one about how to propose staffing levels, given that contractors were supposed to propose the best solution in response to the “performance based work statement.” Exhibit 3 at 219. GSA answered that offerors were free to propose the staffing levels that they thought were appropriate to meet the requirements, but “once a proposal is accepted, the [G]overnment expects the contractor will provide the staffing level proposed.” *Id.* These responses were incorporated into the solicitation and the resulting contract. Exhibit 7 at 276.

#### Performance and Qualification Requirements

The SOW was divided into three sections: general provisions, provisions regarding maintenance services, and provisions regarding custodial services. Exhibit 7 at 279-399. The SOW for the operations and maintenance work required that Phoenix staff the contract with personnel qualified to perform those services. *Id.* at 292. The SOW for the custodial work similarly required Phoenix to provide “training/certifications” and “ensure that their employees are properly trained, licensed and/or certified to operate necessary building systems or equipment.” *Id.* at 364. The custodial SOW also directed Phoenix to “[u]se innovation, technology and other means and methods to develop and perform the most efficient cleaning services for the building.” *Id.*

For the custodial services to be performed, the contract emphasized that, “[a]s a performance-based contract, the requirements are stated in terms of desired results with associated quality standards” and that the “Contractor through innovation, technology, or other means shall perform the work in this contract to meet the quality and performance standards in this [s]ection.” Exhibit 7 at 364, 368. Phoenix was required to submit a quality control plan and cleaning schedules. *Id.* at 394-95. With regard to cleaning schedules, the statement of work provided that the “cleaning schedule is considered the Contractor’s efficient approach to the work, and shall not limit the Contractor to specific levels of staffing, means or methods.” *Id.* at 395.

Section H of the contract was also divided into operations and maintenance and custodial sections. For contractor personnel performing custodial work, the contract required that “[t]he personnel employed by the Contractor shall be capable employees, who are trained and qualified in one or more related type service requirements.” Exhibit 7 at 426.

#### Provisions for Fee Deductions

As a mechanism to obtain satisfactory performance, the contract allowed GSA to reduce the monthly payment “[i]n the event that inadequate performance or nonperformance of a task occurs.” Exhibit 7 at 407. Clause G.7.7 contained a formula for calculating the deduction, which was to be the man hour calculation “based on total number of personnel proposed minus the total number of personnel provided.” *Id.* at 409. According to the clause containing this formula, the “cause of the deduction” was “[f]ailure of the Contractor to have adequate qualified personnel on-site as specified in Contractor’s accepted technical proposal or [contracting officer] approved revision.” *Id.* This clause was titled “Criteria for Deductions” and bore the heading “Criteria for Mechanical Deductions.” *Id.*

#### Deductions by GSA

After award and twenty-one days prior to the start date, Phoenix was required to submit a “contract staffing declaration.” Exhibit 7 at 275. This form was also to be submitted when “any modifications to the contract by GSA result in changes in staffing.” *Id.* Phoenix submitted its staffing declaration in September 2020. It showed that Phoenix employed only 13 FTEs on the contract, 2.1 FTEs fewer than it had identified on its management plan worksheet. Exhibit 24 at 581, 584. Phoenix had fewer persons employed in the custodial functions than it had proposed. *Id.*

Based upon its assertion that Phoenix was required to have 15.1 FTEs employed on the contract, GSA calculated a deduction pursuant to the formula in clause G.7.7 for Phoenix’s September monthly payment. Exhibit 24 at 581. Phoenix’s monthly payment was reduced by \$7818.28. *Id.* GSA made a similar calculation in November for the October

monthly payment. Exhibit 28. While Phoenix disputes that the deduction was properly taken, it does not dispute the calculation of the deduction in accordance with the terms of the deduction provision in the contract. Joint Statement of Undisputed Facts ¶ 34.

Phoenix submitted a claim seeking payment of \$11,934.98, the amounts withheld during September and October. Exhibit 28; Joint Statement of Undisputed Facts ¶ 35. GSA denied the claim, Exhibit 31, and Phoenix timely appealed that decision.

### Discussion

The question whether GSA properly took the deduction for Phoenix's failure to maintain staffing at the level it proposed is a matter of contract interpretation. We begin with a review of the plain language of the contract. *LAI Services, Inc. v. Gates*, 573 F.3d 1306, 1314 (Fed. Cir. 2009) (citing *M.A. Mortenson Co. v. Brownlee*, 363 F.3d 1203, 1206 (Fed. Cir. 2004)). We read the contract as a whole, giving reasonable meaning to all its parts. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991). If the plain language of the contract is unambiguous on its face, the inquiry ends, and the contract's plain language controls. *Hunt Construction Group, Inc. v. United States*, 281 F.3d 1369, 1373 (Fed. Cir. 2002). "An interpretation that gives meaning to all parts of the contract is to be preferred over one that leaves a portion of the contract useless, inexplicable, void, or superfluous." *NVT Technologies, Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004); see Restatement (Second) of Contracts § 203(a) (1981) (contract interpretation should not leave a part of a contract "of no effect").

The issue presented requires us to answer two questions. One, was Phoenix required to maintain the same number of custodial personnel as it proposed? Two, if it was required to maintain this staffing level, did the contract permit GSA to take the deduction that it did based upon Phoenix's failure? We find that the answer to both questions is yes.

The contract language required Phoenix to maintain the staffing levels proposed through the base year of the contract. In the solicitation, which was incorporated into the contract, GSA stated the requirement in the description of the management plan and in response to questions concerning the solicitation. In preparing the management plan, Phoenix stated staffing levels for both the custodial and maintenance functions under the contract.

Phoenix argues that this requirement is in conflict with the contract requirements that Phoenix meet quality and performance standards in performing the custodial work and the assurances that "the cleaning schedule is considered the Contractor's efficient approach to that work, and shall not limit the Contractor to specific levels of staffing, means or methods." Exhibit 7 at 395. Phoenix would have us interpret the contract to allow it to maintain

whatever staffing levels it thought appropriate as long as it also maintains the necessary level of performance. That interpretation renders superfluous the Management Plan and all of the warnings in the solicitation and contract that staffing levels were not to be reduced. Further, to the extent that Phoenix believed that the staffing levels it proposed were too high, it was entitled to present that information to GSA and request permission to reduce staffing. However, the contract provided that “any request to reduce manpower may result in a lower price to be negotiated at time of request.” Exhibit 2 at 208. Again, Phoenix’s interpretation of the contract would render that contract provision meaningless. The accepted rules of contract interpretation do not allow us to accept Phoenix’s interpretation.

Because the requirement to maintain staffing levels was a requirement of the contract, we also find that GSA’s use of the deduction provision to be proper. The contract warned that failure to meet specifications and requirements of the contract, including this specific requirement, could result in deductions. GSA was permitted to take the deductions that it did.

Phoenix argues that GSA improperly employed the deduction provision because there has been no showing of “inadequate performance or nonperformance of a task.” Phoenix asserts that such a showing is a predicate for use of the deductions clause. Phoenix is reading the clause too narrowly. The description of how the deduction is to be calculated makes it clear that it applies to this situation: the “calculation shall be based on total number of personnel proposed minus the total number of personnel provided.” Exhibit 7 at 409. Phoenix failed to meet the requirement to maintain the staffing levels proposed. GSA properly took a deduction to address that failure.

Phoenix also attaches significance to the heading “Criteria for Mechanical Deductions” arguing that the deduction was only meant to apply to Phoenix’s failure to have sufficient numbers of qualified maintenance and operations personnel. However, the description of the deduction does not limit the application of the clause to the operations and maintenance personnel. Further, to limit the application of the clause would leave GSA without an agreed-upon mechanism for deductions described in clause L.5.1.2.3, in violation of standard contract interpretation principles.

Decision

Based upon the foregoing, GSA's motion for summary judgment is **GRANTED**, Phoenix's motion for summary judgment is **DENIED**, and the appeal is **DENIED**.

*Marian E. Sullivan*  
MARIAN E. SULLIVAN  
Board Judge

We concur:

*Harold D. Lester, Jr.*  
HAROLD D. LESTER, JR.  
Board Judge

*Beverly M. Russell*  
BEVERLY M. RUSSELL  
Board Judge