UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 1, 2022

CBCA 7186

PURPLE HEART HEROES LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

John R. Sharp and Keith Bradley of Squire Patton Boggs (US) LLP, Denver, CO, counsel for Appellant.

Hank W. Askins, III, Office of General Counsel, Department of Veterans Affairs, Charleston, SC, counsel for Respondent.

Before Board Judges **ZISCHKAU**, **SULLIVAN**, and **CHADWICK**.

CHADWICK, Board Judge.

The parties disagree about how to read a lease. The lessor and appellant, Purple Heart Heroes LLC (PHH), argues that it is owed $142,927 under a "unit price list" appended to the lease. The tenant and respondent, Department of Veterans Affairs (VA), argues that the lease does not by its terms require payment of the disputed amount in the price list. We agree with VA and deny the appeal.

Background

VA awarded PHH the subject lease for office space in Norristown, Pennsylvania, in August 2019. The annual rent for the first five years is $424,215.36 plus fixed operating expenses. The lease includes multiple exhibits. The dispute centers on exhibit L, a ten-page schedule of prices with no title. VA's solicitation for the lease, issued in April 2019, included a spreadsheet in the same format titled "Unit Price List." Apparently on that basis, both parties refer to untitled lease exhibit L as the "unit price list."

The last two rows in exhibit L state:

SHEET TOTAL	$374,527.00
SHEET TOTAL, EXCLUDING ITEMS THAT ARE PART OF TI [tenant improvement] BUDGET	$142,927.00

PHH first sent VA the data shown in exhibit L in June 2019, during the solicitation process. PHH's transmittal email emphasized, "The Sheet Totals . . . provide two amounts—one for the Total Amount, and one for the Total Amount, Excluding items that are part of the TI budget."

Neither party cites any language in the August 2019 executed lease that cross-references exhibit L or explains its purpose. PHH contends that exhibit L relates to paragraph 1.09 of the lease. Paragraph 1.09 is titled "Tenant Improvement Fee Schedule (Jun 2012)" and states:

> For pricing TI costs, the following rates shall apply for the initial build-out of the Space and are included in the total cost of TI.
>
> | | |
> |---|---|
> | ARCHITECT ENGINEER FEES: | $84,642.25 |
> | TOTAL TI CONSTRUCTION COSTS—INCLUDING A/E [architect/engineer] FEES | $1,446,173.27 |

Other lease terms deal extensively with improvements. Among them, paragraph 1.18 titled "Building Improvements (Mar 2016)" provides, "Before the Government accepts the Space, the Lessor shall complete all Building improvements as identified at design and contained in VA-approved construction drawings." Paragraph 4.01.F states, "Construction of TIs and completion of other required construction work: The Lessor shall complete all work required to prepare the Premises" within 150 days of receipt of a notice to proceed.

Lease exhibit F is the standard form 1364. It shows the components of the total lease price and indicates that the price includes "build-out costs" totaling $2,545,135.52, which is the sum of $1,446,173.27 in "tenant improvements" (as a "lump sum" not amortized in the rent) and $1,098,962.25 in "shell build-out" costs. (Capitalization altered.) These same two "TI" and "Shell" cost figures are repeated in lease exhibit N, a schedule titled "Tenant Improvements Cost Summary (TICS)."

Surprisingly, neither party tells us whether PHH actually completed the "build-out" and the improvements, or whether VA paid PHH for such deliverables, before VA occupied the building. We see no reason to doubt it.

In January 2021, PHH submitted a certified claim to VA for $142,927, the "sheet total" of exhibit L excluding the tenant improvements budget. PHH argued that VA "explicitly agreed to reimburse PHH for the work and material specified in Exhibit L" and "understood, prior to executing the Lease, that PHH expected to be reimbursed for the work and material specified in Exhibit L." The contracting officer denied the claim in August 2021, writing in part, "[Given] the clear understanding that . . . the $142,927 is not part of the TI price and that both parties signed and executed the lease identifying the total TI fees as $1,446,173.27, th[e latter] is the . . . not to exceed price."

PHH promptly filed this appeal. The parties took discovery and submitted the appeal on the written record under Board Rule 19 (48 CFR 6101.19 (2020)).

Discussion

"We apply the usual rules of contract interpretation, which are well settled and without need of elaborate reiteration." *RocJoi Medical Imaging, LLC v. Department of Veterans Affairs*, CBCA 6885, 21-1 BCA ¶ 37,899 (internal quotation marks omitted). We summarized the applicable canons in *Wageworks, Inc. v. Office of Personnel Management*, CBCA 6027 (Jan. 13, 2021).

PHH argues that exhibit L "clarified that a portion of th[e listed] cost was not to be counted, but then it stated explicitly what amount of Exhibit L was, indeed, contract cost not elsewhere accounted [for]. The Exhibit L cost is part of the contract[.]" We disagree. We do not see how a "contract cost" or price can be "part of" a lease absent language in the lease stating why or when the lessee will be obligated to pay the cost or price. The lease recites the annual rent, which was negotiated based on PHH's agreement to make tenant improvements for a fixed price of $1,446,173.27. PHH points to no mechanism by which a separate amount that was "not . . . counted" when the parties agreed upon the rent for the improved premises could be payable on another basis. In short, the lease nowhere says that VA owes PHH the residual amount of $142,927 identified in the last row of exhibit L.

PHH further argues that if we do not agree that the lease clearly requires payment of the disputed amount, "the terms of the [solicitation], the Lease, and the VA's administration of the process were ambiguous." PHH writes:

> It was not until June 2019 that the VA notified PHH that the Unit Price List needed to be submitted and filled in with pricing information. . . . [This was in] the third round of offers. PHH attempted to clear up the confusion created by the VA's failure to make clear that the Unit Price List values should have already been included in the [Tenant Improvement Costs Summary] by sending an email . . . making clear that PHH understood that it expected that the Unit Price List values would be reimbursed as additional costs.

PHH argues that this course of events created a "latent ambiguity" which we must construe against "the drafting party," VA. Again, we disagree.

Where a contract "is unambiguous, we follow the plain meaning without considering extrinsic evidence or related arguments." *P.K. Management Group, Inc. v. Secretary of Housing & Urban Development*, 987 F.3d. 1030, 1033 (Fed. Cir. 2021); *see JBG/Federal Center, L.L.C. v. General Services Administration*, CBCA 5506, et al., 18-1 BCA ¶ 37,019, *motion for reconsideration denied*, 18-1 BCA ¶ 37,087. PHH does not identify and we do not find any relevant ambiguity on the face of the lease itself, which simply cannot be read to say that VA owes PHH an additional $142,927. In the absence of any grounds to consult parol evidence to construe the lease, PHH "waived or forfeited any . . . reliance on the solicitation when it accepted the [terms of the award]." *Meridian Global Consulting, LLC v. Department of Homeland Security*, CBCA 6906, 21-1 BCA ¶ 37,875 (citing *Brawley v. United States*, 96 U.S. 168, 173 (1877) (an executed contract "merge[s] all previous negotiations, and is presumed, in law, to express the final understanding of the parties"), and *SCM Corp. v. United States*, 595 F.2d 595, 598 (Ct. Cl. 1979) ("When legal obligations between the parties will be deferred until the time when a written document is executed, there will not be a contract until that time.")).

Even if we were to examine pre-award evidence, PHH's June 2019 email cannot bear the weight that PHH ascribes to it. The email simply noted that the spreadsheet that later became lease exhibit L "provide[d] two amounts" as "sheet totals." The email did not purport to explain the significance of the residual $142,927 and certainly did not "make clear" that PHH "expected" to "be reimbursed" that amount pursuant to any specific term or language of the lease. We agree with VA that "the lease clearly called out all amounts to be paid by the Government in the properly designated" sections of the lease, and VA "is only required to pay the amounts to which the parties" expressed their agreement in the lease.

Finally, to the extent that exhibit L constitutes a "price list" for deliverable improvements, PHH neither alleges nor shows that it made improvements that would have been included for an additional price of $142,927.

Decision

The appeal is **DENIED**.

Kyle Chadwick
KYLE CHADWICK
Board Judge

We concur:

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge