



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: January 26, 2023

CBCA 7326, 7327

MONBO GROUP INTERNATIONAL,

Appellant,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent.

Dee Monbo, President of Monbo Group International, Owings Mills, MD, appearing for Appellant.

Anastasia Hautanen and Tami S. Hagberg, Office of the General Counsel, Department of Health and Human Services, Washington, DC, counsel for Respondent.

Before Board Judges **GOODMAN**, **DRUMMOND**, and **KULLBERG**.

**DRUMMOND**, Board Judge.

These appeals<sup>1</sup> by appellant, Monbo Group International (MGI), concern task orders issued by respondent, the National Library of Medicine, Department of Health and Human Services (NLM or agency). The agency placed these task orders pursuant to MGI's government-wide acquisition contract with the General Services Administration (GSA contract) for professional services. In CBCA 7326, MGI alleges breach of contract in connection with the agency's failure to exercise option years for which MGI seeks damages totaling \$775,680. In CBCA 7327, MGI seeks \$99,046.50 for an alleged unpaid invoice.

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<sup>1</sup> CBCA 7326 and 7327 are consolidated for this decision.

The agency filed separate motions to dismiss each appeal for failure to state a claim, which the Board treats as motions for summary judgment. MGI opposes the agency's motions. For the reasons explained below, we grant the agency's motions and deny these appeals.<sup>2</sup>

### Background

On September 30, 2020, the agency awarded to "Monbo, Dee" fixed-price task order number 75N97020F00158 (order 158), pursuant to MGI's GSA contract. Order 158, effective September 30, 2020, required "Monbo, Dee" to provide professional acquisition services for a one-year period from September 30, 2020, to September 29, 2021. The total cost of the services was \$193,920. MGI's president, Dee Monbo, and a contracting officer for the agency signed the order.

Order 158 included, inter alia, an option provision that stated:

Unless the Government exercises its option pursuant to the OPTION PROVISIONS clause . . . , this purchase order consists only of the Basic Requirements as defined in the Statement of Work.

- a. FAR [Federal Acquisition Regulation] 52.217-8, Option to Extend Services (NOV 1999)

The Contracting Officer may exercise the option by written notice to the Contractor within thirty (30) calendar days prior to the expiration date of the delivery order.

The statement of work specified a one-year term with no options.

Order 158 also incorporated the GSA contract, which included FAR clause 52.214-4, Contract Terms and Conditions – Commercial Items (Jan 2017) (Deviation – Feb 2007) (Deviation – Feb 2018). This clause addressed changes to the GSA contract requirements, noting that "[c]hanges in the terms and conditions . . . may be made only by written agreement of the parties."

On February 8, 2021, Ms. Monbo advised the contracting officer, via email, that order 158 had been awarded in error to "Monbo, Dee," rather than MGI, the holder of the GSA

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<sup>2</sup> The parties have filed numerous non-jurisdictional motions. This decision renders those motions moot.

contract. In July 2021, the agency emailed to MGI order number 75N97021F00076 (order 76) to replace order 158. Order 76 changed the vendor name to MGI and the contract type to “Time and Material or Labor Hour.” Order 76 stated the same one-year performance period as in order 158. The total hours were limited to 3840, and the amount was not to exceed \$193,920. Ms. Monbo signed and returned order 76 on July 12, 2021.

Several weeks later, on July 28, 2021, Ms. Monbo signed and returned a bilateral modification for order 158 which, in part, stated:

The purpose of this modification is to Terminate for the Government’s convenience; thereby cancelling this order and replacing it with . . . order 76.

All funds associated with this order will be deobligated, reducing the order to \$0.

As the end of the first year performance period approached, the agency advised MGI that order 76 would expire on September 29, 2021. In response, MGI sent a letter to the agency claiming that the agency had breached the terms of the GSA contract and the orders by not exercising the four option years.

On September 29, 2021, the agency responded via email to MGI’s breach claim, writing in part:

The NLM task orders specify a period of performance (POP) of “09/30/2020 to 09/29/2021.” While there are option periods in [appellant’s GSA contract], there are no option periods in the NLM task orders. Even if there were option periods in the NLM task orders, the Government is under no obligation to extend the term of a task order through the exercise of an option period. Accordingly, the NLM task orders expire by their terms today (September 29, 2021) at 11:59 PM.

Two days later, on October 1, 2021, MGI sent a letter to the agency titled “Notice of Claim,” which asserted:

On September 27, 2021, a Notice of Breach of Contract was sent to the National Library of Medicine. The National Library of Medicine was requested to cure the breach. However, the National Library of Medicine has failed to cure the breach.

As a result, we are issuing this Notice of Claim as authorized by the Contract Disputes Act of 1978. Monbo Group International is entitled to a claim for

\$775,680 for the National Library of Medicine's breach of contract dated October 3, 2020, for Acquisition Support Services for the Office of Acquisitions of the National Library of Medicine under RFQ # 1459719.

By letter dated November 4, 2021, MGI sent the agency another claim seeking \$99,046.50. MGI alleged that the agency had failed to pay invoice no. 19654-S for work performed in September 2021. The letter stated:

As of today, November 4, 2021, [the agency] has not paid us our full fees for services performed. Invoice No. 19654-S [for September 2021] is outstanding and past due.

As a result, we are issuing this Notice of Claim as authorized by the Contract Disputes Act of 1978. [MGI] is entitled to a claim for \$99,046.50 for UNPAID Invoice No. 19654-S for \$99,046.50 submitted on September 29, 2021.

This letter constitutes [MGI's] demand for immediate payment of Invoice No. 19654-S in the amount of \$99,046.50.

By email dated November 10, 2021, the contracting officer informed MGI about discrepancies in the September 2021 invoice and suggested that MGI submit a revised invoice but warned that new calculations could result in a credit owed to the agency. There is no evidence that MGI submitted a revised invoice.

On November 24, 2021, a contracting officer issued a final decision denying MGI's certified claim seeking \$775,680. The contracting officer noted that neither order 158 nor order 76 included option years and that, even if they did, the agency had discretion whether to exercise them. MGI appealed the decision, which was docketed as CBCA 7326.

On January 3, 2022, a contracting officer issued a final decision denying MGI's claim for \$99,046.50. The contracting officer concluded that the amount invoiced by MGI did not reflect the actual labor performed in September 2021. MGI filed a timely appeal, which was docketed as CBCA 7327.

### Discussion

The agency filed separate motions to dismiss these appeals, which the Board treats as motions for summary judgment. The agency maintains that MGI's pleadings do not support any of the allegations, and it asks that these appeals be dismissed with prejudice. Although

MGI subsequently filed amended complaints in these appeals, those complaints are not substantively different from the initial complaints for purposes of resolving these motions.

“A party may move for summary judgment on all or part of a claim or defense,” which we will grant if the party “is entitled to judgment as a matter of law based on undisputed material facts.” Board Rule 8(f) (48 CFR 6101.8(f) (2021)). We look to Rule 56 of the Federal Rules of Civil Procedure (Fed R. Civ. P.) for guidance. *See id.* A material fact is one that will affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citing Fed. R. Civ. P. 56). In deciding a motion for summary judgment, the Board will resolve all reasonable inferences and presumptions in favor of the moving party. *Id.* at 255.

However, “the party opposing summary judgment must show an evidentiary conflict on the record; mere denials or conclusory statements are not sufficient.” *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390-91 (Fed. Cir. 1987). If a motion is made and supported as required by Fed. R. Civ. P. 56(a), the adverse party may not rest upon the mere allegations or denials in its filings but must set forth specific facts showing there are genuine issues for trial. *Celotex Corp. v. Catrett*, 457 U.S. 317, 322-24 (1986). We do not find any material facts in dispute. For the reasons stated below, the agency is entitled to judgment as a matter of law in both CBCA 7326 and 7327.

### **CBCA 7326**

MGI asserts that the agency was contractually bound under the GSA contract to exercise four option years and that, by not doing so, breached order 158. MGI alleges that it is owed breach damages totaling \$775,680. The agency opposes MGI’s argument and asserts, inter alia, that it was not contractually required to exercise any options. MGI identifies no language in the GSA service contract or in orders 158 and 76 that obligated the agency to exercise any options.

The law regarding the Government’s non-exercise of contract options is well-established. *Attenuation Environmental Co. v. Nuclear Regulatory Commission*, CBCA 4920, 16-1 BCA ¶ 36,521, at 177,919. Options are made to benefit the Government, and, absent express terms in the contract limiting the Government’s discretion, contractors do not have a right to relief if the Government elects not to exercise an option. *Government Systems Advisors, Inc. v. United States*, 847 F.2d 811, 813 (Fed. Cir. 1988); *Attenuation Environmental*, 16-1 BCA at 177,919. Consequently, contractors generally have no recourse when the Government decides not to exercise an option. *See, e.g., Attenuation Environmental*, 16-1 BCA at 177,919. Under FAR clause 52.217-9, which is the option provision incorporated into the GSA service contract and orders 158 and 76, the agency had a unilateral right to choose whether to exercise the renewal options. *see Hi-Shear*

*Technology, Inc. v. United States*, 53 Fed. Cl. 420, 435-36 (2002) (“An option contract generally binds the option giver, not the option holder.”), *aff’d*, 356 F.3d 1372 (Fed. Cir. 2004). Nothing in that provision limits the agency’s discretion regarding option exercise or obligates it to exercise an option.

MGI also argues that the agency breached the GSA contract and orders 158 and 76 by changing the assigned contracting officer. Neither the GSA contract nor orders 158 and 76 limited the agency’s ability to change contracting officers. MGI has not identified any language to the contrary. MGI has failed to demonstrate the agency acted in bad faith. This argument lacks merit.

MGI posits that order 76 is void because the contracting officer lacked authority to terminate order 158. MGI’s argument is unsupported by the record. The agency has included in the record a copy of the contracting officer’s warrant of contracting authority, establishing her authority to award and administer contracts on behalf of the agency. In addition, both the contracting officer, on behalf of the agency, and Ms. Monbo, on behalf of MGI, signed replacement order 76 as well as the modification terminating order 158. The GSA contract authorized changes pursuant to bilateral modifications. Moreover, without a valid contract, there can be no appeal alleging breach of contract. *See JRS Management v. Department of Justice*, CBCA 2475, 12-1 BCA ¶ 34,962. This allegation is unsupported by the record and therefore fails.

Lastly, MGI contends that inconsistencies and conflicts existed between the GSA contract and orders 158 and 76, and it alleges that the GSA contract takes precedence over those orders. MGI does not identify the alleged inconsistencies. In any event, the GSA contract expressly provided that the parties could make bilateral changes, and MGI accepted and executed the orders. This allegation lacks merit.

Because MGI does not assert any facts that would entitle it to recovery, we must deny the claim.

### **CBCA 7327**

In CBCA 7327, MGI alleges it is entitled to \$99,046.50 for an alleged unpaid invoice pursuant to order 76 due to the agency’s failure to comply with FAR 15.504 (48 CFR 15.504). That FAR provision requires “[t]he contracting officer [to] award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.” MGI complains that the original task order was issued to “Monbo, Dee,” rather than MGI, which it alleges somehow violates FAR 15.504. MGI’s argument is flawed because the task order at issue was not awarded pursuant to FAR Part 15, Contracting By

Negotiation, and, further, because MGI executed a bilateral modification correcting the original error.

To the extent that MGI believes it is entitled to payment under the invoice because there were inconsistencies between order 76 and the GSA contract regarding payment, MGI is mistaken. MGI was paid the price per hour from its proposed quote. Those prices may have been below the amounts identified in the GSA contract, but it is well settled that a “contractor can accept an order at a price below what may be found in a schedule contract.” *Autoflex, Inc. v. Department of Veterans Affairs*, CBCA 4196, 16-1 BCA ¶ 36,356 (citing 48 CFR 8.404, .405). MGI has offered no evidence to the contrary.

### Decision

We have considered MGI’s remaining arguments but do not find them persuasive. For the foregoing reasons, CBCA 7326 and CBCA 7327 are **DENIED**.

*Jerome M. Drummond*

JEROME M. DRUMMOND

Board Judge

We concur:

*Allan H. Goodman*

ALLAN H. GOODMAN

Board Judge

*H. Chuck Kullberg*

H. CHUCK KULLBERG

Board Judge