



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: February 23, 2023

CBCA 7402

RICE SOLUTIONS, LLC,

Appellant,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent.

Daniel Rice, Chief Operating Officer of Rice Solutions, LLC, Plymouth, NH, appearing for Appellant.

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

Before Board Judges **VERGILIO, SHERIDAN**, and **O'ROURKE**.

**SHERIDAN**, Board Judge.

Appellant, Rice Solutions LLC (Rice), seeks \$21,406.25 from the Department of Health and Human Services (agency or HHS) for failure to pay for work performed under a contract to provide certified registered nursing anesthetist (CRNA) services. Because we find that the contested "on-call" hours were already accounted for in the contract's described and previously-used rates, we deny the claim.

The parties elected to have a decision on this matter issued on the record pursuant to Board Rule 19 (48 CFR 6101.19 (2021)).

### Findings of Fact

On February 6, 2019, HHS awarded Rice a contract to provide CRNA services at the Pine Ridge Indian Hospital in South Dakota. The contract was an indefinite-delivery, indefinite-quantity (IDIQ) contract with a period of performance consisting of a one-year base and four option years. The base year ended on February 11, 2020. HHS exercised two of the option years, and the contract expired in February 2022. The contract's task orders were awarded for consecutive periods of performance of similar lengths (approximately two weeks) and requirements (regular, weekend, and holiday hours (including on-call hours)).

Each contract year was funded using the following structure: \$1,168,500 in regular hours (eight hours per day, five days per week), \$641,696.64 in weekend hours (six hours per day, two weekend days), and \$61,701.60 in holiday hours (six hours per day, ten holidays per year). Almost all of Rice's invoices to the agency were for \$55,968.81, which covered the usual two-week increments at the specified rates.<sup>1</sup> This amount was based on a consistent two-week schedule of 230.77 regular hours at a rate of \$193.93 per hour, 48 weekend hours at a rate of \$208.60 per hour, and 4.61 holiday hours at a rate of \$254.52 per hour.

Rice's claim involves task order 75H70622F03027 (task order 3027) for work performed from January 28 through February 11, 2022, the final two weeks of the contract. On February 11, 2022, Rice submitted an invoice in the amount of \$77,375.15—\$20,000 more than its previous invoices. The agency approved a portion of this invoice, paying Rice the usual amount of \$55,968.81. The agency denied the remaining amount because Rice failed to substantiate the additional hours claimed in the invoice.<sup>2</sup> Rice filed a claim with the agency, which the contracting officer denied in its entirety. Rice timely appealed the decision to the Board.

In its appeal, Rice seeks \$21,406.34, the unpaid amount of the invoice. Rice maintains that it provided the services for the additional hours claimed. Rice also contends that the agency's failure to pay it for the additional hours violates the implied duty of good faith and fair dealing and is inconsistent with the parties' prior course of dealing because the agency requested invoicing on a pro rata basis, where the firm-fixed-price amount of the task order was divided by the number of hours worked, rather than an hourly rate multiplied by

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<sup>1</sup> Some payments were for lower amounts for separate, staffing-related reasons. Rice's contract required it to provide two CRNAs to the hospital, but for several invoice periods, Rice only provided one CRNA. This resulted in the agency issuing at least two cure notices to Rice and authorizing a lower payment than invoiced for the relevant periods.

<sup>2</sup> For task order 3027, Rice invoiced for 309.27 regular hours, 72 weekend hours, and 9.36 holiday hours.

the hours worked. Rice claimed that there “was more money in the IDIQ contract” and that it “should have been allowed to bill for the entire final price amount,” including all of the hours that its employees worked.

When questioned about the additional amount billed for task order 3027, Rice provided an employee time sheet showing distinct on-call hours in addition to the typical regular, weekend, and holiday hours. This seems to reflect that Rice’s claim primarily relates to the on-call hours, although it is not directly stated in its briefing. The agency asserts that the on-call hours were previously blended into the firm-fixed price up to the funded amount and that, therefore, Rice has already been paid for them. Rice counters that the invoice covers the amount that it should have been paid throughout the life of the contract and reflects a more accurate description of its employees’ actual hours worked, as demonstrated by the time sheet.

### Discussion

The contract at issue is an IDIQ contract with firm-fixed unit prices for hourly charges. Under this contract type, the agency issues task orders and is obligated to pay for hours ordered and worked. *See National Air Cargo Group v. United States*, 126 Fed. Cl. 281, 285 (Fed. Cl. 2016).

The agency has paid Rice for the full amount of the final task order and for all the hours worked under the task order and contract. That fulfills the obligations of the agency. Rice is not entitled to payment that is in excess of a task order maximum or for hours not worked. As explained further below, Rice lacks a basis to obtain the amount it seeks.

This contract type does not entitle the contractor to receive the ceiling price in the contract; payment is premised on the ordered, actual hours worked. A contractor thus cannot seek additional funding under a task order unless a change is made—which has not been alleged here. The contract at issue here contains a clear description of the services and quantity of hours required alongside the funding allocated. There is no required form of invoicing prescribed by the contract, hourly or otherwise. Given that the contract’s IDIQ framework requires task orders to be funded individually, the agency established a basis for invoicing within the scope of the contract.

Further, the contract’s statement of work clearly included on-call hours as a part of the rate for the contract’s obligated services. It provided that the contracted services duty schedule was to be based on an eight-hour duty day, five days per week, excluding Federal holidays. The contracted services were also subject to call-back on nights, weekends, and recognized Federal holidays. The contract also stated that “there will be one anesthesia provider ‘on-call’ after the regular work day. The contractor will provide on-call anesthesia

services during non-duty hours, weekends, and Federal holidays for both surgical and obstetrical services.” The contract did not provide for a separate hourly rate for on-call hours because they were included in the other rates. Therefore, Rice was required by the contract to supply on-call CRNA services, and as such, it cannot claim additional payment for these services.

Rice’s argument that the agency acted outside of the implied duty of good faith and fair dealing is not compelling. The Court of Appeals for the Federal Circuit has previously held that the implied covenant of good faith and fair dealing cannot be used to expand a party’s contractual duties beyond its express contract. *Metcalf Construction Co., Inc. v. United States*, 742 F.3d 984, 994, 991 (Fed. Cir. 2014) (quoting *Precision Pine & Timber, Inc. v. United States*, 596 F.3d 817, 831 (Fed. Cir. 2010)). From the evidence presented, the agency administered the contract consistent with its terms during the three years of Rice’s performance. Rice has not demonstrated any impropriety on the part of the agency.

Whether funds remained on the contract is not relevant to Rice’s claim. Rice is only entitled to payment for the hours that it performed consistent with the terms of the contract and task order. In reviewing the record, we find that Rice has not provided the necessary support to show entitlement to the additional funds it seeks.

Decision

We **DENY** the claim.

Patricia J. Sheridan

PATRICIA J. SHERIDAN  
Board Judge

We concur:

Joseph A. Vergilio

JOSEPH A. VERGILIO  
Board Judge

Kathleen J. O’Rourke

KATHLEEN J. O’ROURKE  
Board Judge