UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: December 3, 2024

CBCA 7989

MELWOOD HORTICULTURAL TRAINING CENTER, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Meghan A. Douris and Zachary F. Jacobson of Seyfarth Shaw LLP, Seattle, WA, counsel for Appellant.

Jay Bernstein and David C. Charin, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

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

SHERIDAN, Board Judge.

The appellant, Melwood Horticultural Training Center, Inc. (Melwood), appeals the denial of its claim on a contract with the General Services Administration (GSA) to provide custodial and related services at GSA's headquarters building. Melwood challenges GSA's requirement that its contracting officers utilize an actual cost method of calculating annual price adjustments for direct labor cost increases attributed to rising wages and employee benefits required by the Fair Labor Standards Act and the Service Contract Act in the final option year of its five-year custodial services contract. Melwood requests that it be awarded $50,102.13 in relief plus interest on its claim under the Contract Disputes Act, 41 U.S.C. §§ 7101–7109 (2018). For the following reasons, we deny Melwood's claim.

The appeal was submitted for decision on the written record pursuant to Rule 19 (48 CFR 6101.19 (2023)).

Background

The Contract

In 2018, GSA issued a request for proposal (RFP) for a firm-fixed price contract for custodial and related services at GSA's headquarters building. The RFP stated that the period of performance would be one base year plus four one-year options for a maximum contract period of five years. The RFP included the clause at Federal Acquisition Regulation (FAR) 52.222-43, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multiple Year and Option Contracts) (48 CFR 52.222-43 (2018)). This clause provides that "[t]he contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits" when the increase or decrease is caused by a Department of Labor wage determination, collective bargaining agreements, changes by operation of law, or an amendment to the Fair Labor Standards Act of 1938. *Id.* 52.222-43(d).

Performance and Follow-On Years One Through Three

Melwood submitted a timely proposal and was awarded the contract in 2019 "for performance of the base period." Under Melwood's contract with GSA, the number of direct labor hours for each position was listed in the contract. The contract also established that price adjustments for the option years would be established in accordance with "GSA/AbilityOne Strategic Alliance and FAR Clause [52.222-43]."

After the base contract period, GSA and Melwood executed option years one through three following a similar practice. In each instance, Melwood proposed, and GSA accepted, a price increase pursuant to FAR 52.222-43 due to wage and fringe benefits increases under yearly collective bargaining agreements (CBAs) between Melwood and the local Public Service Employees Union. For these three option years, the price adjustment was calculated by applying these wage and fringe benefits increases to the number of direct labor hours listed in the contract.

New Calculation Method for Follow-On Year Four

In 2023, GSA's Procurement Implementation Committee issued an internal policy memorandum updating GSA's "prior method of executing adjustments for option periods based on updated wages in accordance with FAR Clause 52.222-43." The policy memorandum required contracting officers to "use the hourly totals based on the prior year

of the contract, verified through payroll records" to calculate the "actual increase or decrease" in costs the contractor incurred as a result of updated wage and fringe benefits. Melwood was informed of this new calculation method prior to the execution of Follow-On Year Four (FOY4) when the contracting officer directed Melwood to send payroll records in order to calculate the pricing adjustment. Due to Melwood's delays in creating its FOY4 price adjustment proposal to comply with the new requirements, FOY4 was initially executed without a price adjustment, and any price adjustment was to be incorporated through a modification to the contract. When Melwood subsequently submitted its price adjustment, which was calculated based on the *hours in the contract* (instead of *actual hours worked* in FOY3 per GSA's revised policy guidance), the contracting officer disagreed with the adjustment amount and proposed a lower adjustment based on the actual hours worked in the prior year. The contracting officer rejected Melwood's subsequent revised proposal because it was inconsistent with GSA's calculations of actual hours worked.

Certified Claim to GSA

Subsequently, Melwood submitted a certified claim to the GSA contracting officer, seeking an additional price modification for FOY4 in the amount of $50,102.13, asserting that the contract requires the pricing adjustment to be based on the proposed hours listed in the contract as opposed to actual hours worked in the prior period. Melwood received a contracting officer's final decision denying the claim, which Melwood timely appealed to the Board. Melwood contends that GSA's new calculation method conflicts with the terms of the contract and the intent of the parties in their prior dealings under this contract.

Discussion

The issue on appeal is whether GSA's new method of calculating price adjustments for option periods complies with the terms of the contract. As the Board has repeatedly stated, "a long line of our precedent has established that agreed-upon contract terms must be enforced." *13151 W. Alameda Parkway, LLC v. General Services Administration*, CBCA 7126, 21-1 BCA ¶ 37,915, at 184,139 (citing *Madigan v. Hobin Lumber Co.*, 986 F.2d 1401, 1403 (Fed. Cir. 1993)). "If the plain language of the contract is unambiguous on its face, the inquiry ends." *Mare Solutions, Inc. v. Department of Veteran Affairs*, CBCA 5540, et al., 18-1 BCA ¶ 37,048, at 180,349 (citing *Hunt Construction Group, Inc. v. United States*, 281 F.3d 1369, 1373 (Fed. Cir. 2002)).

As explained above, the contract says "[p]rice adjustments for follow-on years shall be established in accordance with the GSA/AbilityOne Strategic Alliance and FAR Clause [52.222-43]." Since FAR 52.222-43 was explicitly incorporated into the contract, we turn to its language. Of particular importance, FAR 52.222-43(d) states "*the contract price*, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the

contractor's *actual* increase or decrease in applicable wages and fringe benefits." (Emphasis added). Since the FAR does not define the word "actual," we look to the common dictionary meaning of "actual," defined as "existing in fact or reality." *See* FAR 1.108(a) ("[u]ndefined words retain their common dictionary meaning"); https://www.merriam-webster.com/dictionary/actual (last visited Nov. 27, 2024). The contractor is required to notify the contracting officer of any increase that it claims and to provide "any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require" for the claimed price increase. FAR 52.222-43(f). Based on the plain meaning, price adjustments – including the "contract price" – are to be based on the costs incurred by the contractor in reality, and the contractor must support any increase in price through relevant supporting data such as payroll information. Any price adjustment proposed must be grounded in the contractor's actual incurred costs, not the costs the contractor *proposed* that it would incur when it agreed to the contract. As such, GSA's method of using hours actually worked during the prior contract period to calculate price adjustments properly aligns the price adjustment with the contractor's actually incurred costs. GSA's revised method, therefore, is in line with the plain meaning of FAR 52.222-43 and consistent with the terms of the contract.

Our plain meaning interpretation of FAR 52.222-43 is supported by case law. The Board, for example, granted the Government's motion for summary judgment where the appellant calculated its claimed adjustment based on projected hours in the contract rather than actual hours worked during the contract period. *Stobil Enterprise v. Department of Veterans Affairs*, CBCA 5698, 19-1 BCA ¶ 37,428, at 181,915-16, *aff'd sub nom. Stone v. Secretary of Veterans Affairs*, No. 2020-1732, 2021 WL 4851262 (Fed. Cir. Oct. 19, 2021). The board recognized that "[a]ny adjustment to the contract price . . . is based on the contractor's *actual* increases in applicable wages and benefits." *Id.* at 181,915 (citing FAR 52.222-43) (emphasis in original). The Court of Appeals for the Federal Circuit affirmed the Board's decision in *Stobil* and noted that, under FAR 52.222-43, a claimant for price adjustments is expected to provide some showing of actual pricing increases before it can be eligible for an additional adjustment beyond that calculated by the agency. *Stone v. Secretary of Veterans Affairs*, No. 2020-1732, 2021 WL 4851262, at *4 (Fed. Cir. Oct. 19, 2021). It held that the appellant had "not sufficiently shown that his employees *actually* worked 2080 hours per year, a necessary element to receive a greater adjustment." *Id.*

A contractor's right to a price adjustment under FAR 52.222-43 and the Government's duty to approve price adjustments is triggered only when a contractor faces increased costs resulting from complying with an increase in the contract's wage determination. *See Call Henry, Inc. v. United States*, 855 F.3d 1348, 1351-52 (Fed. Cir. 2017) (FAR 52.222-43(d) "provides a framework for increasing the unit labor rates in a service contract when certain events occur that increase the costs of complying with an increased wage determination."); *see also Lear Siegler Services, Inc v. Rumsfeld*, 457 F.3d 1262, 1269 (Fed. Cir. 2006)

(finding that "the Price Adjustment Clause is triggered by changes in an *employer's cost of compliance* with the terms of a wage determination"). Since the appellant has provided FOY4 cost calculations using the base year's estimated hours, the appellant has provided no material support that these calculations are based on actual increased costs that the appellant incurred complying with the CBA. Therefore, the appellant's proposed FOY4 price adjustment does not meet the requirements of FAR 52.222-43.

Extrinsic evidence has no viable role in our contract interpretation here, and appellant's proffered extrinsic evidence of party conduct is not relevant. Federal Circuit precedent bars us from relying on extrinsic evidence when the language of the contract is clear and unambiguous. *See Alaska Lumber & Pulp Co. v. Madigan*, 2 F.3d 389, 392 (Fed. Cir. 1993) ("where contract provisions are clear and unambiguous, they must be given their plain and ordinary meaning"); *see also Beta Systems, Inc. v. United States*, 838 F.2d 1179, 1183 (Fed. Cir. 1988) (declaring that "the general rule is that extrinsic evidence will not be received to change the terms of a contract that is clear on its face."). Appellant argues, based on the prior dealings of the parties on this contract, that the Government did not intend for price increases to require the submission of payroll records. However, the parties' prior dealings under this contract do not change the plain language of the contract. Even though parties had been calculating price adjustments through projected hours in the contract for the first three option years, appellant is not released from providing proof of actual costs when the Government requested proof consistent with the plain language of FAR 52.222-43. Thus, FAR 52.222-43 provides clear language guiding our evaluation of appellant's claim and conflicting extrinsic evidence does not weigh into our interpretation.

Decision

The appeal is **DENIED**.

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

We concur:

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge