



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: December 3, 2024

CBCA 8075

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.

This appeal presents the issue of whether proposed direct labor hours or actual labor hours worked should be used to calculate the annual price adjustments for labor cost increases under the Fair Labor Standards Act and the Service Contract Act in the contract's first option year. Because the clear language in Federal Acquisition Regulation (FAR) 52.222-43 (48 CFR 52.222-43 (2022)) requires that adjustments to labor rates reflect actual increases of wages or benefits, we deny appellant's appeal.

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

Background

The Contract

The General Services Administration (GSA) awarded a firm-fixed-price contract to Melwood Horticultural Training Center, Inc. (Melwood or appellant) in January 2022. Melwood is a 501(c)(3) nonprofit and an AbilityOne Program participant through SourceAmerica. Under the contract, Melwood provides custodial services at the Franconia Warehouse Complex for the GSA Region 3 National Capital Region Building Services Branch.

The contract allows for economic price adjustments and includes options for four follow-on years with an additional possible six-month extension. The maximum period of performance is five-and-a-half years, ending in July 2027.

The contract, which commenced on February 1, 2022, included base period labor hours as follows: 18,636 hours for janitors; 3502 hours for infrequent janitors; and 2008 hours each for the lead worker, foreman, and site supervisor. In outlining these hours, the contract contains a price adjustment clause, which states that “[p]rice adjustments for all [option years] shall be established in accordance with FAR 52.222-43, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multiple Year and Option Contracts).” In addition, the price adjustment clause states that “[a]djustments shall be *based upon actual costs* and limited to allowable costs associated with the applicable Labor Categories.” (emphasis added).

Contract Performance and Option Year One Execution

GSA paid Melwood \$1,145,890.12 for Melwood’s performance on the contract’s base year, which ran from February 1, 2022, to January 31, 2023. Ahead of option year one, GSA gave Melwood a ninety-day notice of its intent to exercise option year one. In this November 1, 2022, notice, GSA provided the relevant Department of Labor wage determination and asked Melwood to notify GSA within thirty days if Melwood thought it was entitled to a price adjustment. In response to this notice, appellant asked GSA in December 2022 if the pricing adjustment was to be based on actual as opposed to proposed hours. GSA replied that the adjustment was to be based on actual costs and asked Melwood to “provide payrolls so that we [can] review based on [the] actuals.”

On January 6, 2023, Melwood provided GSA with a price adjustment proposal based on the contract’s base year hours and requested a \$29,670.19 increase for option year one. GSA then asked Melwood for its “base year payrolls” in order to review the proposal. As Melwood did not provide its base year payroll in a timely manner, GSA’s contract

modification PS0003 to continue contract performance did not include price adjustments. GSA stated it would issue any needed requests for equitable adjustment upon review of the payrolls. On January 27, 2023, modification PS0003 was approved by the parties without the yet-to-be-reviewed price adjustment for option year one. The contract value for option year one was \$1,124,891.16.

Between February and August 2023, Melwood provided GSA with two revised option year one proposals as well as several emails following-up on its request for equitable adjustment. In September 2023, GSA provided Melwood with a counteroffer in which GSA concluded that the number of hours Melwood's employees actually worked in the base year differed from the hours listed in Melwood's option year one proposal. GSA found that the allowable adjustment on option year one was \$16,542.63. Melwood responded, stating that it was owed \$24,273.50 because it was owed wage and fringe benefits for "the hours in the contract."

Certified Claim

Melwood submitted its certified claim on November 17, 2023, requesting \$29,670.19 in additional compensation for option year one. This amount is \$13,127.56 more than GSA's September 2023 adjustment offer of \$16,542.63.

Contracting Officer's Final Decision (COFD)

A COFD was issued in January 2024. The contracting officer denied the claim in full because Melwood's calculated wage increase was based on proposed costs rather than actual costs and its method of calculation violated FAR 52.222-43. Melwood, in turn, filed its appeal and complaint with the Board on April 15, 2024.

Discussion

We recently decided *Melwood Horticultural Training Center, Inc. v. General Services Administration*, CBCA 7989 (Dec. 3, 2024), which had similar facts and law to this case. In that case, the Board determined that, even though the parties had been calculating price adjustments through projected hours in the contract for prior option years, that did not release the appellant from providing proof of actual costs when the Government requested such proof in accordance with the plain text of FAR 52.222-43. Prior dealings between the parties in performing a contract does not change the plain language of the contract, and extrinsic evidence is not used when the contract's language is clear. The same reasoning applies here.

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