



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 25, 2025

CBCA 8124, 8137

1102 COMPANY,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Lewis P. Rhodes of Reston Law Group LLP, Reston, VA, counsel for Appellant.

H. Weston Miller and Denise McLane, Office of the General Counsel, Federal Protective Service, Department of Homeland Security, Philadelphia, PA, counsel for Respondent.

VERGILIO, Board Judge.

The 1102 Company (contractor) disputes decisions by a contracting officer for the Department of Homeland Security (agency) denying contractor claims to receive the full monthly prices in the contract. As initially signed, and through modifications, the contract was a firm, fixed-price contract for set monthly dollar amounts for specific numbers of hours for particular personnel positions the contractor was to provide to the agency. The contract specified the number of hours required for each position and that the contractor was only to invoice for actual hours performed. The contractor contends that the contract is a firm, fixed-price, lump sum contract under which it is to receive full payment, without regard to the hours of service provided. In two appeals, here consolidated, the contractor seeks payments under its lump sum theory, although it did not fill one position for one month, as detailed in the first appeal, and another position for three months, as detailed in the second appeal. The contracting officer denied payment for these positions unfilled for four months.

The contract also requires contractor personnel to have security clearances. The individuals the contractor selected to fill the positions lacked clearances for the months the positions were unfilled. Separate from its “lump sum” theory, the contractor seeks payment, however, contending that it had hired the individuals who were ready to perform or performing various tasks and that the Government delayed the finalization of the clearance process. The contracting officer found no such delay and denied relief.

The contractor has elected the small claims procedure, such that this decision by one judge is final, conclusive, and non-precedential and may be set aside only in the event of fraud. 41 U.S.C. § 7106(b) (2018); Rule 52 (48 CFR 6101.52 (2024)). The fixed-price contract specifies that the contractor is to invoice only the actual number of hours of performance. The “fixed” price of the contract relates to the hours required for each position and the monthly rate. The contractor does not receive the full contract price when it does not provide the number of personnel for each hour required under the contract. The contractor also contends that the agency improperly impeded the contractor from filling the two positions by taking excessive time and making errors during the security clearance process. This argument fails because the record does not establish agency impropriety. The Board denies each appeal.

Findings of Fact

The contract

The parties entered into a contract under which the contractor provides personnel, supervision, and services necessary to perform continuous administrative support services for a base year (June 1, 2021 through May 31, 2022) with option years. Exhibit 5 at 2.¹ Under the firm, fixed-price contract, the contractor is to provide services as full time equivalents at fixed monthly rates for a stated number of hours for identified positions. The contract requires full-time equivalent work days of eight hours each work day for each position. Required positions are described by title, qualifications, duties, other such information, and the number of hours to be worked. Clearances are required for the personnel here at issue. Exhibits 5 at 19; 10 at 1, 5-7, 26-28.

In addition to establishing fixed monthly prices for each position, associated with a number of hours of work, the contract specifies that the contractor “is responsible for submitting accurate invoices that reflect the actual services provided each month. . . . The Contractor shall compute the invoice price to reflect the actual amount of hours performed.” Exhibit 5 at 21.

¹ All exhibits are in the appeal file.

The contract identifies security clearance requirements. Contractor personnel must complete background investigations and obtain a favorable decision permitting entry on duty prior to commencing work. Exhibits 5 at 71-73; 10 at 26-28. The agency recognizes that it responded to a question presented prior to the submission of the proposals when it specified that the length of time to obtain a favorable entry on duty decision after the submission of completed security forms is approximately thirty days, with the caveat that the timeline could vary, depending upon the background check for the individual. Exhibit 26 at 1-2.

Clearances

The contractor provided security information for one individual on July 28, 2023, and obtained a clearance and approval for entry on duty on August 23, 2023. That individual did not perform services under the contract prior to early September 2023. Exhibit 11 at 1, 4.

The contractor provided security information for another individual on December 13, 2023. On December 27, 2023, the agency sent an email seeking information for its background investigation. The email was incorrectly addressed. On January 3, 2024, the agency sent the email to the correct address. The employee submitted a package for final adjudication on January 23, 2024. Exhibit 17 at 3-4, 6-7. On January 25 and 26, and thereafter, the agency reached out to the individual to obtain additional information, because the security review entailed inquiries and analysis, beyond the initial submission. The preliminary adjudication was approved on March 1, 2024, which allowed entry on duty. *Id.* at 12, 14-15.

The record does not indicate that the second individual would have responded any earlier than occurred had the email initially been sent to the correct address. The record is silent on the individual's availability to respond between December 27 and January 3. The record further does not support a conclusion that the agency acted improperly in reviewing the application and ultimately approving the individual's security clearance. The situation is consistent with the agency's pre-proposal comment that some background checks may require more than thirty days to obtain clearance and approval to work under the contract.

Invoices

The contractor invoiced the agency seeking payment for August 2023. Included in the amount sought was \$10,094 for the "first" individual who had not received a clearance to enter on duty during the month. The agency did not pay that portion of the invoice. Exhibit 13.

The contractor invoiced the agency seeking payment for December 2023 and January 2024, reflecting charges for the position which it had not filled. The contractor noted in its

invoice for February 2024 that it would be seeking payment for the position which it had not filled. At issue is the “second” individual who had not yet received the necessary clearance to begin work under the contract. The contractor sought in a claim, and here seeks, a total of \$16,076.58 relating to the individual who had not received a clearance to enter on duty during those months. The agency did not pay the portion of the invoices relating to the individual who lacked clearance and denied the claim for the amount. Exhibits 19, 21, 23.

Discussion

The contractor seeks payment of \$10,094 and \$16,076.58 under the plain language of the firm, fixed-price contract. As separate bases for relief, it contends that the agency acted improperly in using excessive time to grant each clearance.

Firm, fixed-price contract

In asserting that it is entitled to a fixed amount each month, with the amount not tied to the number or hours worked by personnel, the contractor misconstrues the contract. The firm, fixed-price aspect refers to the rates for the positions. The contract does not obligate the agency to pay the contractor a lump sum per month without regard to the hours worked by each individual for each position. The contract is clear. The contract requires full time equivalent work days of eight hours each work day for each position. The contractor is to invoice only for hours worked: “The Contractor is responsible for submitting accurate invoices that reflect the actual services provided each month. . . . The Contractor shall compute the invoice price to reflect the actual amount of hours performed.” Exhibit 5 at 20. The agency has paid the contractor for the actual number of hours of work performed; the two individuals, for whom the contractor seeks payment, did not “work” under the contract during the months in question. The contractor has not established a basis for relief under this theory. There is no agency breach in paying the contractor pursuant to the terms of the contract.

Obtaining required clearances

The contractor asserts that the agency inhibited its ability to readily staff positions, given the time the agency expended in granting clearances, including the agency’s use of an incorrect email address. The contractor has not established agency liability. The contract requires that individuals possess clearances. It takes time to obtain a clearance. For the “first” individual, from application submission to approval, the period was less than thirty days. For the “second” individual, the time from submittal to approval and clearance was two and one-half months. Given the need for further information to complete the clearance review, the record does not demonstrate that the time from submission to approval was excessive. Regarding the initial use of the incorrect email address, the record does not

demonstrate that the individual could or would have responded any sooner had the initial email been properly addressed or that the time for approval would have been shortened. For both individuals, the record fails to support the theory of an agency breach of duty with respect to the clearance processing times.

Decision

The Board **DENIES** the appeals.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge