

Appeal of -- )  
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Swiftly Printing & Digital Imaging, Inc. ) CAB No. 2010-3  
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Under Jacket No. 579-515 )  
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Appearances for Appellant:

George Nikfard  
Swiftly Printing & Digital  
Imaging, Inc.

Appearances for Respondent:

Julie Kelley Cannatti,, Esq.  
Roy E. Potter, Esq.  
U.S. Government Printing Office

### DECISION

Swiftly Printing & Digital Imaging, Inc. appeals the final decision of the contracting officer of the United States Government Printing Office (GPO), declining to pay the full amount of a purchase order, priced at \$5,507, issued by GPO to Swiftly under Jacket No. 579-515 to print and provide to the Social Security Administration (SSA) 170,000 postcards titled "Latest [Internal Revenue Service] IRS & SSA Updates" because Swiftly did not deliver the full quantity of postcards. Swiftly argues that GPO's failure to pay the full amount of the purchase order was improper. GPO responds that its actions were proper and that appeal should be denied. GPO has also filed a motion for summary judgment, which contends that there is no genuine issue as to any material fact, and that GPO is entitled judgment as a matter of law.

We grant GPO's motion for summary judgment and deny the appeal.

GPO issued a quotation request under Jacket No. 579-515 to provide the postcards. The quotation request stated that award would be made "based on the largest quantity of postcards for \$5,507." Rule 4 (R4) at R-2. According to the quotation request, the contractor was to be provided a compact disc with 156,679 names and addresses to which the postcards were to be mailed. Id. Quotations were due on October 1, 2009. Id.

A purchase order was issued that same date to Swifty based on its offer of 170,000 postcards for the allocated \$5,507. R4 at R-6. The purchase order incorporated the GPO Contract Terms included in GPO Publication 310.2. Id. Among the incorporated contract clauses that are pertinent to this appeal were:

**1. Contractual Responsibility.**

Awards by GPO for printing, binding, and related services are the sole responsibility of GPO and not of its customer agencies. Modifications shall have no force and effect unless addressed before the fact to and subsequently confirmed in writing by the Contracting Officer. Failure to comply with this clause may be cause for nonpayment of additional costs incurred or rejection of the order.

**11. Quantity Variations.**

(a) No variation in the quantity of any item order will be permitted unless authorized in the specifications. . . .

GPO Publication 310.2 (Rev. 6-01), GPO Contract Terms, Contract Clauses, ¶¶ 1, 11.

The record shows that Swifty delivered the 156,659 postcards for which it had been given names and addresses to the post office for mailing plus an additional 1,000 blank postcards to the SSA as required the contract.<sup>1</sup> R4 at R-12-13. On November 4, 2009, Swifty submitted an invoice to GPO for 170,000 postcards. R4 at R-8. The agency refused to process this voucher because only a total of 157,659 postcards had been delivered to the post office and the SSA. R4 at R-23. On April 21, 2010, the contracting officer issued a contract modification that reduced the order by the 12,341 postcards that were not delivered and lowered the contract value by \$376.40. R4 at R-20. Swifty did not execute this contract modification, but filed this appeal.

Swifty contends that it processed 170,000 postcards in accordance with the purchase order, but the purchase order did not state what should be done with the postcards beyond those for which it had been given names and addresses and the 1,000 blank postcards that were to be delivered to the SSA. Complaint ¶ 6. Swifty further claims that a representative of the SSA told Swifty to destroy the remaining 12,341 postcards. R4 at R-18; Appellant's Answer to Respondent's Request for Admissions ¶ 5. In an email to GPO, an SSA representative denied that anyone at the SSA advised Swifty to destroy the remaining postcards. R4 at R-17. The SSA representative also stated in this email that when he was made aware that Swifty's purchase order provided for the delivery of more postcards than the number of addresses that had been provided to Swifty, he sent the vendor "an additional address file." Id. Swifty denies that the SSA provided it with an additional address file. Appellant's Answer to Respondent's Request for Admissions ¶ 2.

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<sup>1</sup> There is no explanation for the minor discrepancy between the statement in the purchase order that 156,679 names and addresses would be provided to Swifty, R4 at R-6, and Swifty's delivery to the post office of only 156,659 postcards. R4 at R-13. However, Swifty does not claim that it delivered more than 156,659 postcards to the post office.

However, the record shows that Swifty never contacted the contracting officer for instructions on what to do with the remaining 12,341 postcards or to obtain additional addresses for postcards to allow for the delivery of 170,000 postcards. Appellant's Answer to Respondent's Request for Admissions ¶¶ 1, 3. Moreover, there was no provision in the contract that allowed for the delivery of less than 170,000 postcards. In this regard, the "Quantity Variations" contract provision (quoted above) only allows for the delivery of the less than the contracted for amount if the specifications so provide. There was no other authorization by the contracting officer for Swifty to deliver less than the contracted for amount of postcards, until the contracting officer decided, well after Swifty had submitted an invoice for 170,000 postcards even though it had only delivered 157,659 postcards, to accept delivery of the lesser amount of postcards with a \$376.40 reduction in contract price to account for this short delivery.

Respondent has filed a motion for summary judgment contending that because the contracting officer did not authorize Appellant to deliver less than 170,000 postcards, it is entitled to judgment as a matter of law. We agree.

It is well established that a motion for summary judgment is only appropriate where there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A material fact is one that may affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Factual conflicts and ambiguities are not to be resolved as part of a motion for summary judgment, and all doubts as to the existence of genuine issues as to material facts should be resolved against the moving party. American Pelagic Fishing Co., LP v. United States, 379 F.3d 1363, 1371 (Fed. Cir. 2004).

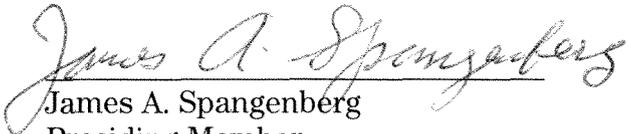
The "Contractual Responsibility" clause (quoted above) included in the contract clearly provides that contract modifications must be addressed to, and confirmed in writing by, the GPO contracting officer. Agents of the customer agency, such as the SSA, are without authority to modify the contract. Horizon Graphics, Inc., GAO CAB No. 2006-8, 2007 GAO CAB Lexis 1 at \*7; Digmatix, Inc., GPOBCA 07-96, 1997 GPOBCA LEXIS 14 at \*16-17. Thus, Swifty's contentions that the SSA advised Swifty to destroy the undelivered postcards did not relieve Swifty of its contractual obligations to deliver 170,000 postcards, and are thus not material, in the absence of the GPO contracting officer's approval of this action.<sup>2</sup> Thus, GPO was entitled to deduct \$376.40 from the contract value to account for the 12,341 postcards not delivered as required by the contract.<sup>3</sup>

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<sup>2</sup> While Swifty claims that its experience with GPO "is that if there are modifications to contract, the customer contacts" Swifty, the only evidence it has provided in support of this assertion was one instance where a GPO contracting officer approved the modification suggested by the customer. Declaration of Appellant's Representative (Sept. 24, 2010) at 1.

<sup>3</sup> Swifty does not dispute the reasonableness of the amount of the price reduction.

GPO's motion for summary judgment is granted and Swifty's appeal is denied.

  
James A. Spangenberg  
Presiding Member

  
Sharon L. Larkin  
Member

  
Louis A. Chiarella  
Member

November 23, 2010