
Appeal of:)
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Inventory Discount Printers) CAB No. 2011-1
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Under Jacket No. 310-079)
)
Purchase Order No. 93664)
)

Appearance for the Appellant: Christine D. Baldrige
Inventory Discount Printers

Appearance for the Respondent: Roy E. Potter, Esq.
Julie Kelly Cannatti, Esq.
U.S. Government Printing Office

DECISION

Inventory Discount Printers (IDP) appeals the Government Printing Office's (GPO) final decision denying the firm's claim for equitable adjustment for expenses incurred during the processing of Program 380-S Lubrication Orders for the Department of the Army. IDP asserts that the contract specifications were ambiguous, which entitles it to recover \$38,299.29 for expenses incurred during performance of the contract. Currently before the Board is GPO's motion for summary judgment. For the reasons set forth below, the Board grants GPO's motion for summary judgment and denies the appeal.

BACKGROUND

This appeal involves an invitation for bids (IFB) issued by GPO for laminating and other printing activities for Program 380-S Lubrication Orders for the Department of the Army. The IFB, which provided for bid opening on August 19, 2004, contemplated the award of a contract for a 1-year base period commencing on September 1, with three 1-year option periods. Rule 4¹ (R4), Tab 2, at 3. The IFB announced that

¹ References to the Rule 4 file refer to the Rule 4 file submitted in a prior appeal (CAB 2008-2) filed by IDP, which our Office dismissed for lack of jurisdiction because the issues presented on appeal had not been presented to the contracting officer for a final decision. Inventory Discount Printers, GAO CAB No. 2008-2, 2009-1 BCA ¶ 34,122. Upon the filing of the current appeal, the parties agreed to use the Rule 4 file submitted

approximately 25 to 60 orders would be placed each year, that each order would require approximately 100 to 5,000 copies, and that occasional orders could require up to 30,000 copies. Id. at 7. As is relevant here, the lamination requirements for each order were as follows:

After printing, laminate both sides of the sheet with **delustered polyester film**, 0.0015" thick. Lamination must be suitable for inscribing with grease pencil and erasing without damage to the surface and **must remain clear**. Lamination must not distort printed matter and must not produce any visible evidence of an imperfect seal—no bubbles or blisters.

Id. at 8 (emphasis added).

IDP submitted a bid in response to the IFB that, upon bid opening, was determined to be the lowest priced bid. Because IDP's bid was 18 percent lower than the next lowest bid, the contracting officer requested that IDP review and confirm its bid before making award to the firm. On August 27, 2004, IDP responded that "[w]e have re-examined our bid prices and stand by the bid submitted." R4, Tab 5, at 21. Later that same day, IDP again confirmed that "[w]e are pretty comfortable with our bid as submitted and do not believe that the lamination requirement will pose any hardships on filling the contract as provided." R4, Tab 6, at 23.

The contracting officer awarded the contract to IDP and issued the first of several print orders to the firm on September 1, 2004. At the conclusion of the base period, the contracting officer declined to exercise the options, thus allowing the contract to expire on August 31, 2005. However, with the concurrence of GPO, IDP continued to process outstanding print orders into 2007. R4, Tab 16, at 95. On February 16, 2007, the last of the open print orders were terminated for convenience at IDP's request. R4, Tabs 12 and 13, at 77-78.

On August 25, 2007 (nearly two years after the contract expired), IDP submitted a claim for equitable adjustment to the contracting officer, based on a "mistake/error in [IDP's] original bid amount" because IDP relied on the wrong laminating equipment and pouch (as opposed to roll) laminate. R4, Tab 15, at 87-91. On October 17, 2007, the contracting officer issued a final decision denying IDP's request for equitable adjustment. R4, Tab 16, at 95. IDP appealed that decision to the Board on the basis that the contract specifications were ambiguous as to the type of laminate finish required. Complaint 2008-2 ¶ 14. On April 20, 2009, we dismissed that appeal because the issue on appeal—whether the contract specifications were ambiguous—had not been presented to the contracting officer for final decision. Inventory Discount Printers, GAO CAB No. 2008-2, 2009-1 BCA ¶ 34,122.

in the prior appeal; any new documents supplementing the file are referred to as Supp. Rule 4 (Supp. R4), Tab ___, at ___.

On August 24, 2010, IDP submitted a claim for equitable adjustment to the contracting officer in the amount of \$38,299.28, based on ambiguous specifications. Specifically, IDP complained that the word “delustered” as used in the IFB (quoted above) was “vague and ambiguous” because the term did not identify the type of finish to be used (i.e., matte, satin, or other finish) and other language in the IFB indicated that the surface “must remain clear” after grease pencil markings are erased. Supp. R4, Tab 1, at 3. IDP asserted that the contract ambiguity caused it to base its bid on clear laminate film, which is less expensive than the matte or satin finished laminate that GPO ultimately required. IDP requested that GPO reimburse it for its increased costs. Id.

GPO denied the request for equitable adjustment, and IDP appealed to the Board. IDP’s complaint alleges that the contract specifications are ambiguous and, therefore, defective. IDP reasserts its claim that the words “delustered” and “must remain clear” create an ambiguity that entitles it to relief. Complaint 2011-1 at 4-7.

GPO now moves for summary judgment, contending that the contract language is unambiguous. GPO further asserts that if an ambiguity exists, it is patent and imposed upon IDP a duty to inquire, which IDP did not do. Motion for Summary Judgment at 6-7.

DISCUSSION

Summary judgment is appropriate where no material facts are genuinely in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Mingus Constructors, Inc. v. United States, 812 F.2d 1387, 1390 (Fed. Cir. 1987). 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). However, the party opposing summary judgment must show an evidentiary conflict on the record; mere denials or conclusory statements are not sufficient. Mingus Constructors, Inc. v. United States, *supra*, at 1390-91; Pure Gold, Inc. v. Syntex (U.S.A.), Inc., 739 F.2d 624, 626-27 (Fed. Cir. 1984).

The matters presented to the Board are one of contract interpretation. Contract interpretation, including whether a contract term is ambiguous, is a question of law that is amenable to summary judgment. Varilease Tech. Group, Inc. v. United States, 289 F.3d 795, 798 (Fed. Cir. 2002); Grumman Data Sys. Corp. v. Dalton, 88 F.3d 990, 997 (Fed. Cir. 1996). Contracts are not necessarily rendered ambiguous by the mere fact that the parties disagree as to the meaning of their provisions. Community Heating & Plumbing Co., Inc. v. Kelso, 987 F.2d 1575, 1578 (Fed. Cir. 1993). Where the contract language is unambiguous, the language is given its “plain and ordinary” meaning and the Board may not look to extrinsic evidence to interpret the provisions.²

² After filing its complaint, IDP requested discovery to discern how other contractors interpreted similar, but different specifications in lubrication orders issued after the

Teg-Paradigm Env'tl., Inc. v. United States, 465 F.3d 1329, 1338 (Fed. Cir. 2006). The various contract provisions must be read as part of an organic whole, according reasonable meaning to all of the contract terms, Gould, Inc. v. United States, 935 F.2d 1271, 1274 (Fed. Cir. 1991), and the Board's interpretation of the contract must assure that no contract provision is made inconsistent, superfluous, or redundant. Hughes Comm'cns Galaxy, Inc. v. United States, 998 F.2d 953, 958 (Fed. Cir. 1993).

We find no ambiguity in the contract language here. As noted above, the contract required that the laminate film be "delustered" and that it also "be suitable for inscribing with a grease pencil and erasing without damage to the surface and must remain clear." The common, ordinary meaning of the word "deluster" is "to reduce the sheen of." Webster's New Collegiate Dictionary 298 (1979). When the specification is read as a whole, the word delustered obviously refers to the type of finish required, and the words "must remain clear" refer to how the laminate must hold up to inscription and erasure. The words "must remain clear" in no way alter the type of finish required. IDP's interpretation that the specification allowed it to provide clear gloss laminate is simply not reasonable.

IDP asserts that the word delustered is "confusing" because it could refer to multiple types of dulled finish, such satin or matte. Opposition to Motion for Summary Judgment at 5-6. However, the fact remains, IDP did not provide any type of dulled finish, but instead provided a clear gloss finish that did not comply with the contract requirements. Because, as stated above, the contract language was not ambiguous, IDP is not entitled to relief.³

For the foregoing reasons, the Board grants GPO's motion for summary judgment.

The appeal is denied.

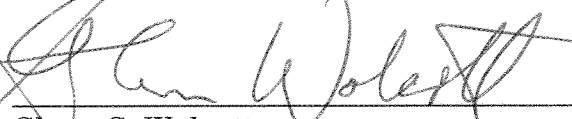
order here. We denied IDP's request for discovery because it was irrelevant to the issue on appeal—whether the specification of this particular lubrication order was defective or ambiguous. Summary judgment need not be denied to satisfy the speculative hope that discovery will result in the uncovering of evidence to support a complaint. Pure Gold, Inc. v. Syntex (U.S.A.), Inc., 739 F.2d 624, 627 (Fed. Cir. 1984); Haug's Quality Printing, Inc., GAO CAB No. 2007-6, 2008 GAO CAB Lexis 1, at *14. In any event, as stated above, the Board may not consider extrinsic evidence, such as that sought by IDP, when the plain meaning of contract language is clear. Teg-Paradigm Env'tl., Inc. v. United States, *supra*.

³ We further find that, even if the IFB language was ambiguous, the ambiguity is patent—that is, obvious from the face of the IFB—and required IDP to seek clarification before submitting its bid. Triax Pacific, Inc. v. West, 130 F.3d 1469, 1474-75 (Fed. Cir. 1997); Staffco Constr., Inc., ASBCA No. 51764, 2002-2 BCA ¶ 31,905.

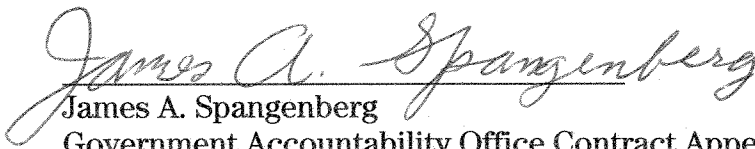
Dated: May 31, 2011



Sharon L. Larkin, Presiding Member
Government Accountability Office Contract Appeals Board



Glenn G. Wolcott
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