

CONTRACT APPEALS BOARD

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Appeal of –)
Far Western Graphics, Inc.) CAB No. 2006-5
Under Jacket No. 578-733,)
Purchase Order No. R-3038)

Appearance for the Appellant: Serena Motekaitis,
Account Representative
Far Western Graphics, Inc.

Appearance for the Respondent: Roy E. Potter, Esq.,
Associate General Counsel,
Office of General Counsel,
Government Printing Office

DECISION

Far Western Graphics, Inc. (FWG) appeals the Government Printing Office's (GPO) decision to terminate for default Purchase Order No. R-3038 placed with FWG under Jacket No. 578-733 for 75,000 Annual Northwest Forest Pass Hangtags, as well as GPO's assessment of excess procurement costs resulting from that termination.¹ FWG asserts

¹ This appeal was originally filed with the Department of Veterans Affairs Board of Contract Appeals (VABCA) on August 15, 2006 (Docket No. VABCA-7599GPO), which was then considering appeals of contracting officers' final decisions on GPO contracts. The VABCA transferred this appeal to the Government Accountability Office (GAO) Contract Appeals Board (the Board) on September 29, 2006. VABCA Transfer Order (Sept. 29, 2006). On September 5, GPO had entered into a Memorandum of Understanding with GAO to provide for the GAO Board to act as the Government Printing Office Board of Contract Appeals and consider appeals of contracting officers' final decisions on GPO Contracts. GPO elected to terminate its arrangement with the VABCA to consider these appeals because VABCA ceased to exist as of January 6, 2007. This appeal is not subject to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601 *et. seq.* (2000), since that statute is not applicable to legislative branch agencies, including GPO. According to the disputes clause included in this contract, "[t]he decision of the Board shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, or arbitrary, or so grossly erroneous as necessarily to

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claims for \$5,100 due under the purchase order, \$900 in “administrative fees,” and \$840 in excess procurement costs reportedly already collected by GPO—a total of \$6,840. Appeal at 1-2; FWG Letter to the Board re: “Short Paid” Invoice (undated).²

We deny the appeal.

I. Background

This acquisition was to satisfy a requisition placed with GPO on June 20, 2006 by the Department of Agriculture, Forest Service, Regional Office, Portland, Oregon for 75,000 hangtags, designed to be displayed in motor vehicles that are using Pacific Northwest forest lands. Rule 4 File (R4), Tab 1, Printing and Binding Requisition. GPO’s Seattle Regional Printing Procurement Office issued Quotation Request Jacket No. 578-733 for 75,000 Annual Northwest Forest Pass Hangtags on June 21, 2006. R4, Tab 2, Quotation Request, Jacket No. 578-333 (June 21, 2006). Ten thousand copies were to be delivered by July 7, 2006 and the balance by July 17, 2006. *Id.* at 1. Quotations were due to be submitted on June 22, 2006. *Id.* On that date, FWG both submitted the low acceptable quote at \$5,100 and received the order from GPO. R4, Tab 3, Purchase Order R-3038 (June 22, 2006) and Abstract of Quotations (June 22, 2006).

As pertinent to this appeal, both the Quotation Request and Purchase Order included the following among the specifications:

PAPER: * Must be in accordance with JCP [Joint Committee on Printing] Paper Specification Standards in effect on date of this order.

White CSU Tag, 13 pt.³

R4, Tab 2, Quotation Request, at 1. The term “CSU Tag” was not defined in the referenced JCP Paper Specification Standards or in the Quotation Request or Purchase Order. At no time prior to delivery did FWG contact GPO with any question regarding the “CSU Tag” specification. *See* Memorandum of Contracting Officer (Feb. 7, 2007) at 1.

The Quotation Request incorporated GPO Contract Terms (GPO Pub. 310.2, effective December 1, 1987 (Rev. June 2001)), including the standard changes, disputes, and default clauses.

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imply bad faith, or not supported by substantial evidence.” GPO Pub. 310.2, effective December 1, 1987 (Rev. June 2001), Clause 5(f), Disputes.

² The FWG letter indicates that \$913.69 was deducted from an invoice on another contract. If FWG contends that GPO has back-charged FWG more than the \$840 that was due GPO, it should submit a claim to GPO.

³ The term “13 pt.” means that the tags were to have 0.013-inch thickness. Answer at 1.

Delivery of the tags was timely made to the Forest Service. FWG Submission to the Board (Feb. 14, 2007). On July 18, the Forest Service found the delivered stock unacceptable, “not even close,” because it “looks like an uncoated index or something,” and told GPO that a reprint would be required. R4, Tab 5, Record of Telephone Calls (July 18, 2006). When contacted, a FWG representative indicated to GPO that they had “used an uncoated tag stock” and he was “not sure what ‘CSU’ means.” *Id.*

On July 19, 2006, the GPO Contracting Officer advised FWG by letter that the delivered tags were “rejectable” because they “were printed on the incorrect stock” and the stock “was not White CSU Tag (clay-coated sulphite tag stock, water-resistant).” He requested that FWG reprint the 75,000 tags “per spec[ification]s at no additional cost to the Government” with final delivery on or before August 17, 2006. R4, Tab 7, Contracting Officer’s Letter to FWG (July 19, 2006).

On July 24, 2006, FWG’s representative wrote to the Contracting Officer, contending that FWG had met the specification:

As you can see on the PO [Purchase Order], the spec calls out White CSU Tag, 13 point. There is no mention of a JCP Paper code on the PO and surely no mention of the stock being “Clay Coated Sulphite.” . . . The quality is up to spec and we followed the PO as requested. We feel the real error was in how the PO was written. . . . Our position is simple, there should be no re-print and there will be no discount given.

R4, Tab 8, FWG Letter to GPO (July 24, 2006). A handwritten note on this letter memorializes a subsequent phone call, in which the FWG representative indicated to GPO that she believed that “CSU” meant “card stock uncoated.” *Id.*

GPO checked various sources to confirm its understanding of the meaning of the term “CSU,” including various tag suppliers, *The Printing Service Specialist’s Handbook and Reference Guide* (1994, Rev. 1997) published by the Society for Service Professionals in Printing, and an in-house expert. These sources all indicated that “‘CSU’ is a standard term used throughout the tag printing industry to define “clay-coated sulphite tag stock.” R4, Tab 20, GPO Memorandum (Aug. 1, 2006). A GPO representative reported the results of GPO’s investigation to FWG, and advised, “If you refuse to correct job, [GPO] may have to terminate for default.” R4, Tab 18, Telephone Call Memorandum (July 28, 2006); Tab 20, GPO Memorandum (Aug. 1, 2006).

On July 28, 2006, FWG’s representative again advised GPO that FWG had “produced the job per spec and in good faith,” that the specifications did not indicate “Coated Sulfite Paper,” and that “CSU is an acronym for Card Stock Uncoated.” She advised that her “paper vendors” had indicated that “Tag is ‘Uncoated’ and they had never heard of a ‘Coated Tag’.” R4, Tab 19, FWG Letter to GPO (July 28, 2006).

By letter dated August 3, 2006, the Contracting Officer advised FWG that Purchase Order R-3038 was “terminated for default because of [FWG’s] refusal to reprint the order pursuant to [GPO’s] letter of quality rejection dated 07/19/06.” The letter further advised

that “the same or similar items terminated may be reprocured against [FWG’s] account, on such terms and in such manner as the Contracting Officer deems appropriate,” and that FWG “will be held liable to the Government for any excess costs.” This letter was identified as a “final decision of the Contracting Officer.” R4, Tab 21, Contracting Officer’s Notice of Termination – Complete to FWG (Aug. 3, 2006).

On August 4, 2006, a reprocurement order for 75,000 “White CSU Tag, 13 pt.” tags was placed with Ascot Tag and Label for \$5,940, resulting in excess reprocurement costs to GPO of \$840.⁴ R4, Tab 24, Ascot Purchase Order; Tab 25, Declaration of GPO’s Chief, Examination & Billing Branch, Office of the Customer Services Controller, Finance & Administration. As indicated above, FWG reports that this amount has been collected off of an invoice on another purchase order. FWG Submission to the Board re: “Short Paid” Invoice (undated).

The Board has been provided with (1) the CSU hangtag produced by the predecessor contractor, (2) the hangtag provided by FWG under this purchase order, and (3) the hangtag provided by Ascot. GPO Submission to the Board (Feb. 20, 2007), attaches. 13, 14, 15. The hangtag produced by FWG under this purchase order is substantially different in appearance and texture from the other samples provided.

II. ANALYSIS

This appeal turns on the meaning of the contract specification “CSU Tag.” This term was not defined in the quotation request or in the JCP Paper Specification Standards referenced in the specification.

The language of a contract must be given the meaning that would be derived from the contract by a reasonably intelligent person acquainted with the contemporaneous circumstances. *Hol-Gar Mfg. Corp. v. United States*, 351 F.2d 972, 975 (Ct. Cl. 1965). Thus, to interpret disputed contract terms, the context and intention of the contracting parties are more meaningful than the dictionary definition. *Metric Constructors v. NASA*, 169 F.3d 747, 752 (Fed. Cir. 1999).

We find that the term “CSU Tag” is a technical trade term, without an ordinary meaning in common discourse. Under the circumstances, the Board must necessarily consider evidence of trade practice in interpreting the meaning of the term “CSU Tag.” *See Metric Constructors*, 169 F.3d at 752; *MPE Business Forms, Inc. v. United States*, 44 Fed. Cl. 421, 426 (1999). This is so because “evidence of trade practice and custom . . . illuminates the contemporaneous circumstances of the time of contracting, giving life to the intentions of the parties. It helps pinpoint the bargain the parties struck and the reasonableness of their subsequent interpretations of that bargain.” *Metric Constructors*, 169 F.3d at 752. As explained by the United States Claims Court, “one cannot understand accurately the language of such sciences and trades without knowing the peculiar meaning attached to

⁴ FWG does not challenge the reasonableness of the claimed excess reprocurement costs.

the words which they use. It is said that a court in construing the language of the parties must put itself into the shoes of the parties. That alone will not suffice; it must adopt their vernacular.” *Western States Constr. Co., Inc. v. United States*, 26 Cl. Ct. 818, 824 (1992), quoting *Hurst v. W. J. Lake Co.*, 16 P.2d 627, 629 (Or. 1932).

GPO asserts that the specification reference to “CSU Tag” required a coated tag, whereas FWG asserts that the uncoated tag it provided met the quotation request requirements.⁵

GPO has provided considerable evidence that the term “CSU Tag” is a trade term commonly used in the tag printing industry to mean tags printed on coated card stock. This evidence includes tag vendor website printouts, vendor catalogs, and other vendor materials from six separate vendors. Each of the vendor documents includes a specific reference to “CSU” or “CSU Tag” as a designation for a type of available tag; while some vendors just indicate CSU Tags as available, most further explain that “CSU Tags” are coated tags. R4, Tabs 10-12, 15-16; GPO Supplemental Brief (Feb. 20, 2007), Tab 8. In addition, the GPO Chief of Testing and Technical Services investigated the issue and concluded that CSU was a designation for a coated tag. R4, Tab 17.

An especially instructive document referenced by GPO is an excerpt from a printing handbook published by the Society for Service Professionals in Printing, which describes the designation “SU” as “a tag industry designation for sulphite stock,” “13SU” as a medium-weight manila stock with good strength and smooth writing-surface [with a] [t]hickness of .013 inches . . .” and “13CSU” as “Same as basic stock 13SU, but clay-coated and available in various colors.”⁶ R4, Tab 13, Society for Service Professionals in Printing, *The Printing Service Specialist’s Handbook and Reference Guide* (1994, Rev. 1997) at 29.5. Such handbooks prepared by experts in the industry are commonly used in the interpretation of trade terms in federal contracts. See, e.g., *Blinderman Constr. Co. Inc.*, VABCA No. 1156, June 30, 1976, 76-2 BCA ¶ 11,958 at 97,331; *Herley Indus., Inc.*, ASBCA No. 13,727, May 14, 1971, 71-1 BCA ¶ 8,888 at 41,308.

FWG, however, asserts that “the term Tag is commonly regarded industry-wide as Uncoated Stock,” and that it contacted “two of the largest paper vendors on the west coast,” and neither “had ever heard of a CSU Tag.” Appeal at 1. One paper vendor representative advised that the term “‘White CSU Tag 13 pt.’ is not a term used commercially in uncoated and coated cover and Bristol manufacturing and commercial

⁵ While GPO also at one point advised FWG that the tags must also be water resistant, it subsequently stated that this advice was a “clerical error” and not a requirement. R4, Tab 7, Contracting Officer’s Letter to FWG (July 19, 2006); Answer at 4. Notwithstanding FWG’s arguments, this discrepancy is immaterial to this dispute because FWG provided uncoated tags where GPO required coated tags.

⁶ FWG argued that this definition does not indicate that CSU tags are available in white and argued that the information provided in the Rule 4 file does not indicate that it is available in white. FWG Submission to the Board (Dec. 7, 2006). In response, GPO has provided a printout from a tag vendor website indicating that 13 CSU tags are available in white. GPO Supplemental Submission to the Board (Feb. 20, 2007), Tab 8.

printing. . . . I have never in my 15 years in the paper business been exposed to a term 'CSU'." FWG Submission to Board (Dec. 7, 2006), attach. 1, Letter from Spicers Paper, Inc. to FWG (Dec. 6, 2007). Another paper vendor representative advised that she was "unable to locate any Tag classified as CSU." FWG Submission to Board (Dec. 7, 2006), attach. 2, Letter from Unisource to FWG (Nov. 29, 2006). No evidence has been produced in this appeal that "CSU" means "Card Stock Uncoated," as was previously alleged by FWG, or that CSU denotes anything other than tags printed on coated stock.

The evidence provided by FWG does not overcome the large volume of trade practice evidence in the record that shows that a CSU tag is one printed on coated stock. At best, FWG has explained the circumstances of its misunderstanding. It has not demonstrated, however, that its reading of the specifications that a "CSU Tag" is an "uncoated" tag was correct or reasonable. Although the paper vendors contacted by FWG state that they had "never heard of a coated tag," it is clear from the evidence in the record that CSU is, in fact, a commonly recognized term in the printing industry denoting a coated tag, especially among vendors with experience in producing tags. Further, the record indicates that previous vendors, as well as the vendor on the reprourement in this case, were able to provide such tags.

FWG notes, however, that the sources cited by GPO in support of its argument that CSU denotes a coated tag stock are exclusively "from print shops – not Paper Manufacturers or Distributors of Paper Stock." FWG Submission to Board at 1 (Dec. 7, 2006). FWG contends that "it is the responsibility of the U.S. GPO to provide specifications that can be followed by any vendor – not just specialty 'tag house' vendors that they have used before and who are familiar with Coated Tag." *Id.* at 3.

This argument is not convincing. We note that "print shops" (such as FWG and tag suppliers) were the natural target of the Quotation Request, which was for printing services, not paper supply. Here, the record establishes that the term "CSU Tag" was commonly used and understood in the printing industry, and in particular the tag printing industry—the industry to which this contract related. Trade usage evidence can be used in interpreting a contract where "there was a well-defined usage generally adopted *by those engaged in the business to which the contract relates*, at the place where the contract was made or was to be performed." *William Clairmont, Inc.*, ASBCA No. 15447, February 9, 1973, 73-1 BCA ¶ 9,927 at 46,459 (emphasis added), *quoting* 5 Williston on Contracts, Section 650 (3rd ed.); *see also* Am. Jur. 2d, vol. 17a, "Contracts," § 360, "Technical Words" ("[T]echnical words are to be interpreted as usually understood by persons *in the profession or business to which they relate* . . ." (emphasis added)).


FWG contends that the GPO Quotation Request and Purchase Order did not include sufficient specific information describing "CSU Tag" and that prior GPO solicitations for this type of tag have specifically indicated that the required tags were to be "coated." While we agree that the term "CSU Tag" could and probably should have been more precisely defined in the Quotation Request to avoid a misinterpretation by a contractor not familiar with the terminology, the fact is, as indicated above, the term "CSU Tag" is commonly used in the printing industry, in which it has a clear meaning that can be ascertained by research on the Internet or by reference to other industry literature.

Thus, the fact that GPO has more precisely indicated that CSU tags are coated tags in prior solicitations does not render reasonable FWG's interpretation of the present solicitation as not requiring a coated tag.

We conclude that the required hangtags were to be printed on coated stock and that FWG's failure to provide coated tags and refusal to provide compliant tags constituted a reasonable basis to terminate FWG's purchase order for default. Consequently, we deny FWG's claims for the amount of the purchase order, administrative costs, and collected excess procurement costs.

The Appeal is denied.

Dated: June 8, 2007



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