

CONTRACT APPEALS BOARD

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Appeal of – )  
)  
Horizon Graphics, Inc. ) CAB No. 2006-8  
)  
Under Jacket No. 553-512, )  
Purchase Order No. W-6414 )

Appearance for the Appellant:

Robert Gacek, Jr.  
President  
Horizon Graphics, Inc.

Appearance for the Respondent:

Roy E. Potter, Esq.,  
Associate General Counsel,  
Office of General Counsel,  
Government Printing Office

**DECISION**

Horizon Graphics, Inc. (HG) appeals the Government Printing Office's (GPO) decision declining its claim for an additional \$256.22 in costs under Purchase Order No. W-6414 placed with HG under Jacket No. 553-312 for 7,000 training brochures required by the Department of Transportation, Transportation Safety Institute (TSI).

We deny the appeal.

**BACKGROUND**

This acquisition was to satisfy a requisition placed with GPO on July 25, 2006 by the Department of Transportation, Transportation Safety Institute (TSI), for 7,000 training brochures. Rule 4 File (R4), Tab 1, Printing and Binding Requisition (July 25, 2006). Also on July 25, GPO's Oklahoma City Satellite Procurement Office issued Quotation Request Jacket No. 553-512 for the brochures. R4, Tab 2, Quotation Request, Jacket No. 553-512 (June 25, 2006). Delivery was to be complete by August 15, 2006. *Id.* at 1. Quotations were due on July 26, 2006. *Id.* HG submitted the low acceptable quote at \$736.56 and received the order that same day. R4, Tab 3, Abstract of Quotations; Tab 5, Purchase Order W6414 (July 26, 2006). HG explicitly agreed to abide by GPO Contract Terms,

Solicitation Provisions, Supplemental Specifications, and Contract Clauses. R4, Tab 4, Letter from GPO to HG, July 26, 2006, with HG's Agreement.

On July 28, 2006 HG furnished proofs to TSI for approval. R4, Tab 6, "Proof/Print OK" facsimile; Tab 15, Contracting Officer's Memorandum (Nov. 15, 2006). The proofs were returned to HG on or about August 8, 2006. A handwritten facsimile message dated August 8 from HG to the Contracting Officer advised:

Today I received by mail 2 sample brochures from  
your customer → wants to change paper finish

- (A) 90# white index
- (B) 80# white dull/satin/matte finish

- 1) 90# index has been purchased – restocking fee \$89.00
- 2) to purchase (B) additional cost would be \$167.22

I am requesting a written modification for → \$256.22  
to change paper and an appropriate  
extension when job is OK'd to print (NOT received)<sup>1</sup>  
scheduled to print 8-9, ship 8-10.

R4, Tab 7, HG Facsimile Message (Aug. 8, 2006).

On or about August 11, 2006, the proof sheet was returned to HG with the notation "Use 80# paper w/matt finish". R4, Tab 6, Proof/Print OK" Facsimile. This document, as provided to the Board, includes the "Customer Signature" of Chrysa Gillespie, a TSI employee, dated August 11, 2006.

On August 11, 2006, the GPO Contracting Officer advised HG, via facsimile, as follows:

The Department has changed their requirements for the stock on Jacket 553-512. The new stock is White Matte Coated Cover, grammage 215 g/m<sup>2</sup> (basis weight 80 lbs per 500 sheets, 20 x 26"), equal to JCP Code L50. We will pay a restocking fee and the cost difference between 90 lb index and 80 lb Matte Cover. Please furnish proof of the restocking charge. Also, [I] need more information on the sheet size and number of sheets required for this order. I looked at the difference in cost of a sheet that gets 4-out. The cost difference was \$122.50. I understand that this might not reflect your actual costs so please provide me with more information such as how you

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<sup>1</sup> It is not clear from the copy of this document provided the Board whether the parenthetical notation "(NOT received)" in the penultimate line of the facsimile above is contemporaneous with the balance of the document.

came up with your original paper cost and the new cost. Also, you are due a six workday extension.

CONFIRMATION OF RECEIPT REQUESTED: Yes.

R4, Tab 8, GPO Facsimile Transmission Slip (Aug. 11, 2006). On August 22, 2006, HG advised GPO via facsimile as follows:

We reserve the right to not disclose any contractual pricing and only provide public published information. Please process contract modification requested 8-8-06.

R4, Tab 9, HG Facsimile (Aug. 22, 2006). The balance of this document reiterated information previously provided to GPO by HG. Id. Attached to this document were excerpts from published paper vendor pricing sheets.

On August 29, 2006, the GPO Contracting Officer wrote to HG:

Even though you did not furnish all the information I requested for the cost difference you did furnish enough that I was able to ascertain that your request for \$167.22 was a reasonable request. As for the restocking fee, you have refused to furnish any proof that you were charged any such fee. All I need is some part of an invoice that shows this charge or even a letter from your paper supplier that you were charged \$89.00 for the return of 1,250 sheets of 90 lb. Index.

I am willing to write the contract modification if you will furnish some documentation proving that you incurred this cost.

R4, Tab 10, Letter from Contracting Officer to HG (Aug. 29, 2006).

HG replied as follows:

Please furnish contract modification as requested per your request for documentation.

1) Copy of itemization listing returned merchandise and notice of change request 90# index.

2) You have been provided with pricing in advance of printing the order. Authorization to proceed was made verbally. No challenge of pricing was made prior to proceeding with printing.

3) Documentation of return policy for paper by paper company has been provided.

4) No further confidential information will be provided. There is no contract terms in GPO publication 310.2 to support your demand.

R4, Tab.12, HG Facsimile to GPO (Aug. 29, 2006) (emphasis in original). Attached to this document was a copy of a paper company's invoice, showing the return by HG of 2000 "90# 92brt WHITE". R2, Tab 11, Invoice (Aug 15, 2006).

On October 20, 2006, the Contracting Officer wrote to HG, advising that he had determined that HG was "due some or all" of the amounts claimed, but that he did not have "sufficient documentation to determine the actual amounts." R4, Tab 13, Letter from GPO to HG (Oct. 20, 2006). He continued:

The paperwork you furnished does not indicate [the] costs, nor that 24 x 36" sheets of White Index are "Mill Orders" requiring freight charges when returned. An invoice is issued when paper is ordered from or returned to a paper distributor. All I need from you is a copy of invoices for these three transactions. You [seem] to be concerned that I will get confidential information on your business, I can assure you that I am only interested in protecting the Government's interest. On August 22, 2006 you stated that you will only provide public information. The "public information" you provided did not include any prices for the stocks ordered nor any indication of what the cost would be to return the 90# Index. A statement from the paper distributor with the total cost for each of the three transactions will be acceptable.

The Contracting Officer stated that this letter was "a final decision of the Contracting Officer" and advised HG regarding appeal rights. Id.

This appeal followed on November 2, 2006. HG requests the award of "additional expenses" in the amount of \$256.22. Appeal at 1.

## DECISION

HG takes the position that the August 8, 2006 "Proof/Print OK" received from TSI constituted a modification of the contract, enforceable against the government without further negotiation or documentation on HG's part. Appeal at 1.

HG's oral and written contact with GPO's customer, TSI, did not effect a modification of HG's contract with GPO. In accepting the Purchase Order, HG agreed to abide by GPO contract clauses. Clause 1, "Contractual Responsibility," provides as follows:

### 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 or 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.

The Contractual Responsibility clause clearly indicates that contract modifications must be addressed to, and confirmed in writing by, the GPO contracting officer. Agents of the customer agency, such as TSI, are without authority to modify the contract. See, United Computer Supplies, Inc. v. United States, 43 Fed. Cl. 351, 359 (1999), aff'd, 230 F.3d 1382 (Fed. Cir. 2000). Accordingly, the "Proof/Print OK" facsimile and other communications between HG and TSI, as well as the August 8 2006 HG facsimile to GPO detailing purported cost increases, did not effect a contract modification binding on GPO.

The Board considered whether HG may nonetheless recover under the contract's Changes clause, which provides:

4. Changes.

\* \* \* \* \*

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted anytime before final payment.

To recover under the Changes clause, HG must produce evidence of its increased costs resulting from the change in the government's requirements. John R. Hundley, Inc., VABCA 3493-3495, 95-1 BCA ¶27,494, Feb. 10, 1995 ("The essential burden of establishing the fundamental facts of liability, causation, and resultant injury remains with the Contractor."). See also, Jimenez, Inc., VABCA No. 6351-6354, 6421-6423, 6591, 6611, 02-2 BCA ¶ 32,019, Sept. 24, 2002 at 158,243, 158,252.

The Board had a telephone conference with the parties, during which HG agreed to produce to GPO and the Board evidence supporting its claim for increased costs. HG made its submission on April 27, 2007. The evidence produced does not support the claim.

HG produced its original invoice showing the actual costs of the 90# index stock as \$253.97 for 2,000 sheets, or \$.16931 per sheet. HG Submission, April 27, 2007, attach. 1. It is undisputed that 1,225 sheets were required to perform the printing

job; it follows that HG's actual cost for the 90# index stock was \$207.40.<sup>2</sup> HG also maintains (without supporting evidence) that its customary mark-up is 30 percent, or in this case, \$62.22. Accordingly, to the extent evidence has been produced, it shows the cost of the original 90# index stock to the government should have been \$269.62.

HG also produced an invoice showing its actual cost<sup>3</sup> for the replacement 80# white/dull/satin matte finish stock was \$156.41 for 1,225 sheets.<sup>4</sup> HG Submission, April 27, 2007, attach. 2. Assuming HG's customary mark-up of 30 percent (or \$46.92), the total cost to the government for the replacement stock should have been \$203.33, or \$66.29 less than the cost of providing the original 90# index stock should have been. Accordingly, we deny HG's claim to the extent that it is based on a cost difference between the two types of stock.

HG claims that its restocking fee of \$89 is comprised of a return charge of \$41.48 and internal charges of \$47.50. HG has produced no evidence to support its claim that it actually incurred a return charge. Accordingly, that aspect of its claim is denied. Additionally, HG has produced no evidence that it actually incurred internal charges of \$47.50 in connection with the change of stock. In any event, as discussed above, the cost of the replacement stock was actually \$66.29 less than the cost of the original stock; accordingly, to the extent that HG did, in fact, incur internal charges, those charges were more than ameliorated by the additional funds received by HG pursuant to its original price. Accordingly, this aspect of its claim is denied.

We deny the appeal.

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<sup>2</sup> \$.16931 x 1,225=\$207.40.

<sup>3</sup> That invoice includes a handwritten notation from HG stating that this was a 'one time sale price' and indicating that its customary price would have been \$339.10. The actual, not customary, price is what concerns us for purposes of determining whether HG is entitled to an equitable adjustment pursuant to its claim.

<sup>4</sup> The record shows that the sheets of the 90# index stock were 24 inches by 36 inches, HG Submission, April 27, 2007, attach. 1, while the sheets of the 80# white/dull/satin/matte finish stock were 25 inches by 38 inches. HG Submission, April 27, 2007, attach. 2. Accordingly, the record shows that approximately the same number of sheets would be required, regardless of which stock is used.

Dated: September 27, 2007



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Scott H. Riback,  
Contract Appeals Board of the  
Government Accountability Office



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Frank Maguire  
Contract Appeals Board of the  
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James A. Spangenberg  
Contract Appeals Board of the  
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