



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 6, 2007

CBCA 417

GREENLEE CONSTRUCTION, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Gary Greenlee, President of Greenlee Construction, Inc., Alpharetta, GA, appearing for Appellant.

David A. Leib, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **PARKER**, and **GOODMAN**.

DANIELS, Board Judge.

We consider here cross-motions filed by the contractor and appellant, Greenlee Construction, Inc. (Greenlee), and the respondent, the General Services Administration (GSA). Greenlee moves for summary relief. GSA cross-moves for summary relief and, in the alternative, to dismiss the appeal for lack of jurisdiction and for failure to state a claim upon which relief can be granted.

The case involves a certified claim that Greenlee submitted to a GSA contracting officer on June 20, 2005. No contracting officer ever issued a decision on the claim, and Greenlee appealed from a deemed denial of the claim.

The claim is based on the contention that a GSA employee, Banta M. “Troy” York, “cheated Greenlee out of about \$300,000 worth of work over a two year period.” In its notice of appeal, the contractor explains more fully its belief that Mr. York did this “by showing our bids and giving our work to his family and friends.” As a result of the contracting officer’s actions, Greenlee maintains in its claim, GSA owes it \$283,200 -- \$45,000 in anticipatory profit (fifteen percent of \$300,000); \$51,000 in overhead (seventeen percent of \$300,000); and \$187,200 in wages of Gary Greenlee, Greenlee’s president (\$45 per hour times 4160 hours).

In the claim, Greenlee identifies the contract under which the claim was made as “GS-04P-96-LCD-0015 Tampa Term Partition Contract.” Neither party has been able to find a copy of this contract, so we do not know exactly what the instrument says. However, the parties do agree on the following statements regarding the contract: The contract was for partitioning and miscellaneous repairs in Tampa, Florida, and surrounding areas. It was awarded on August 12, 1996. GSA exercised options to extend the contract for two option periods, the first from August 12, 1997, through August 14, 1998, and the second beginning on August 15, 1998. The contract was an indefinite delivery/indefinite quantity (IDIQ) contract under which separate task orders were issued to Greenlee for discrete projects. The contract guaranteed that GSA would issue orders to Greenlee worth at least a specified minimum amount. GSA issued orders in an amount greater than the guaranteed minimum.

Appellant’s motion

Greenlee’s motion for summary relief is based on a report of investigation prepared by GSA’s Office of Inspector General in April 2004. According to the contractor:

This report verifies that York did exactly what we stated in our claim letter. That is that he diverted our work and showed our bids to his father and others. . . . This . . . report . . . verifies we were cheated beyond any doubt.

In response, GSA notes that the report includes a statement that Mr. York admitted to soliciting a bid from his father for one particular job, which was ultimately awarded to a company owned by his father. The agency points out, however, that the report does not make the findings that the contractor asserts it makes. The report mentions Greenlee only in passing. It says that the investigation was initiated after Greenlee’s president had made allegations against Mr. York. The report also recites the following statements by GSA employees to investigators: one employee had recommended Greenlee for a job which had gone to another firm; another employee had a good relationship with Greenlee’s president; and a third employee knew that Greenlee had been a term contractor for the federal building in Orlando, Florida. The report does not say that Mr. York “cheated Greenlee out of about

\$300,000 worth of work over a two year period” on the Tampa contract or that he showed Greenlee’s bids to his family and friends.

Resolving a dispute on a motion for summary relief is appropriate when the moving party is entitled to judgment as a matter of law, based on undisputed material facts. The moving party bears the burden of demonstrating the absence of genuine issues of material fact. All justifiable inferences must be drawn in favor of the nonmovant. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

Greenlee has not met its burden of demonstrating the absence of genuine issues of material fact as to the assertions it has made. The Office of Inspector General report does not provide a basis on which we could hold that Greenlee is entitled to judgment as a matter of law. We therefore deny the contractor’s motion for summary relief.

Respondent’s motion

GSA’s motion is predicated on the following assertions: Greenlee has not shown how GSA breached the contract, and it has not shown that its claimed damages are related to any breach. The contractor’s contentions amount to allegations of fraud or criminal liability which may not be pursued in this forum.

We need go only so far as the agency’s first assertion to grant its motion.

An IDIQ contract obliges the buyer to purchase from the seller only a stated minimum quantity. Once the buyer purchases that quantity, its legal obligation under the contract is satisfied. *Varilease Technology Group, Inc. v. United States*, 289 F.3d 795, 799 (Fed. Cir. 2002); *Travel Centre v. Barram*, 236 F.3d 1316, 1319 (Fed. Cir. 2001); *Marut Testing & Inspection Services, Inc. v. General Services Administration*, GSBCA 15412, 02-2 BCA ¶ 31,945, at 157,820. Once GSA purchased the guaranteed minimum quantity from Greenlee under this contract, it had met its obligations under the contract. Therefore it cannot be deemed to have “cheated” Greenlee out of any work, even if orders which it might have issued to Greenlee under the contract were given instead to another contractor.

Decision

Greenlee's motion for summary relief is denied, and GSA's cross-motion for summary relief is granted. The appeal is **DENIED**.

STEPHEN M. DANIELS
Board Judge

We concur:

ROBERT W. PARKER
Board Judge

ALLAN H. GOODMAN
Board Judge