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CONTRACT APPEALS BOARD
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DAVID A. ASHEN
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APPEAL OF–

CENVEO, DALLAS

Under Jacket No. 546-405

CAB No. 2009-7

Appearance for the Appellant: Thom Bate
Cenveo, Dallas

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

Cenveo, Dallas appeals the final decision of the contracting officer in connection with a claim arising from an order for the fabrication of a quantity of 4,950,110 envelopes under Jacket No. 546-405, Purchase Order K-4716, issued by the Government Printing Office (GPO) on behalf of the United States Department of Agriculture (USDA). The contracting officer's final decision denied Cenveo's claim for $55,338.68 associated with the remanufacture of some 3,600,500 envelopes that were found unacceptable and rejected by GPO. Final Decision of the Contracting Officer, Rule 4 File, exh. 27, at BATES 62-64. Cenveo filed a complaint with the Board on July 22, 2009, and amended it on August 28. GPO filed an answer to the complaint and Rule 4 file on October 14. Thereafter, the parties were afforded an opportunity to engage in discovery. Neither party sought to materially supplement the record beyond the contents of the Rule 4 file, with the exception of the addition of one exhibit (exhibit 29) by GPO, tendered by motion dated November 5.

The Board sought additional information from both parties through questions presented on January 29, 2010; responses to the questions were submitted on February 3. Both parties have agreed to judgment on the existing record without a hearing.

We deny the appeal.

BACKGROUND

The order was issued by GPO on January 5, 2009, and included a delivery schedule commencing on February 9, and continuing through June 29. Purchase Order Issued to Cenveo, Jan. 5, 2009, Rule 4 File, exh. 4, at BATES 11-13. The order contained a detailed narrative description of the envelopes, the applicable specifications, and the nature of government furnished information as follows:

> Window envelopes printing in black ink (printing on the outside front and one typeline on flap). Security tint is required, color and design is contractor option. Envelopes to be open side, high cut, side seam with full gummed machine sealable flap. Flap must be 2" deep. Die cut a 1-5/8 x 4-1/2" window, with round corners located 3/4" from the left and 1/2" from the bottom. Cover window with a suitable transparent window glued to the inside. All envelops must be cut exactly the same and stacked in the same direction within each box.
>
> Window envelops are for mechanical inserting.
>
> Envelope has a square flap and throat cut that are unique. Square flap is 2" in height fully gummed, glue shall be 1" in height and a minimum of 1/2" from flap edges. Flap must match design and cut per detailed specifications listed in the Internet Web site below. All envelope dimensions shall not vary more than +/- 1/16".
>
> Contractor is to review the specifications listed in the Internet Web site below for detailed specifications.
>
> Product must be suitable for use on the Pitney Bowes series 8 & 9 inserting systems.
>
> The Envelope Specification Book for USDA along with the flap design, cut and throat cut can be obtained at the following web site: http://www.pbdmt.com/usda_envelope_specifications.pdf
>
> The current Pitney Bowes Envelope Specification book for USDA will be used to evaluate any complaints.
>
> NOTE: The warranty period for this order is extended from 120 days to one calendar year.
>
> **MATERIAL FURNISHED:** Contractor to pickup at GPO. Camera copy and a reprint sample showing placement of the window along with the envelope specification book.

Purchase Order Issued to Cenveo, Jan. 5, 2009, Rule 4 File, exh. 4 at BATES 11-12.[1] After receiving the order, a representative of Cenveo sent an e-mail to GPO's contract representative on January 14 requesting a sample of the "flap" of the envelope. The request provided:

> My production supervisor would like to see the flap since you are requesting a 2" flap. We don't want you to have any inserter problems. We would need the sample so we can best match the flap you are already using. You can either mail me a live sample or outline a sample and fax it over to me.

E-mail from Cenveo to GPO, Jan. 14, 2009, Rule 4 File, exh. 7, at BATES 21.

In response to this request, GPO's contract representative sent the outline of an envelope to Cenveo's representative by facsimile dated January 15. That outline depicts the opened "front" of the envelope, that is, it does not show the "throat" of the envelope where something would be inserted, but, rather, the surface of the envelope where the address would be placed, with the flap in the open position. Flap Drawing, Rule 4 File, exh. 29.

Thereafter, on January 20, Cenveo's representative again contacted GPO's representative by e-mail, stating that Cenveo wanted to provide a carton of envelopes for testing in the Pitney Bowes inserter machine, and asking where she could send the carton. E-mail from Cenveo to GPO, Jan. 20, 2009, Rule 4 File, exh. 8, at BATES 22. In response, GPO's representative provided the name and address of a contact at USDA, and advised that the carton should be clearly marked for testing and include the jacket number. E-mail from GPO to Cenveo, Jan. 21, 2009, Rule 4 File, exh. 8, at BATES 22.

On January 21 and 22, Cenveo's representative sent several e-mails to a representative of USDA inquiring whether the carton of envelopes that had been sent had successfully run through the machines. In response, the USDA representative sent the Cenveo representative an e-mail dated January 22 stating: "The test ran well. Proceed with production!" E-mails between Cenveo and USDA, Jan. 21, 22, 2009, Rule 4 File, exh. 10, at BATES 29-31.

USDA received the first shipment of envelopes from Cenveo on January 26. Rule 4 File, exh. 10, at BATES 28. Samples were selected from this shipment on that same date, and USDA's representative sent an e-mail to GPO's representative stating as follows:

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[1] The record shows that, in addition to the purchase order, GPO furnished the "reprint sample" and "camera copy" of the envelope to Cenveo. Rule 4 File, exh. 6, at BATES 15-18. The "reprint sample" was not an actual sample envelope, but rather a printed rendition of the envelope's front that was dimensionally illustrated to show the placement of the window on the front of the envelope. The "camera copy" also was not an actual envelope, but rather a printed sheet that showed the text that was to be printed on the envelope.

> . . . I just got samples of the WNFC-0088 envelope and I see a potential problem even though the test envelopes the mailroom ran were ok! The side seams on both sides of the envelope are not glued all the way to the top and they have this little squared off cut where the envelope meets in the corners. I know Cenveo has done these envelopes before. I talked with the technician and they will try to run these, but they need to correct the envelopes for the next shipments. I don't know why the corners [were] made like this. Tell the vendor to check the specification.

E-mail from USDA to GPO, Jan. 29, 2009, Rule 4 File, exh.10, at BATES 25. After Cenveo was advised of the problem, it corresponded with USDA and GPO representatives to set up a site visit for Cenveo representatives to observe the envelopes being run through the machines. E-mails among Cenveo, USDA and GPO, Feb. 4-18, 2009, Rule 4 File, exh. 12, at BATES 33-37. In addition, Cenveo was sent a facsimile drawing intended to depict the problem with the envelopes in advance of their site visit. Rule 4 File, exh. 9, at BATES 23-24. An examination of that drawing shows that the problem was associated with the "throat" area of the envelope, and more specifically, where the corners of the envelope were joined.

On February 18, the day of the site visit, the record reflects that sample envelopes were selected from Cenveo's first production lot to be run through the inserter machines and that the envelopes jammed in the machines. Notes from GPO Representative, Feb. 18, 2009, Rule 4 File, exh. 13, at BATES 38.

Subsequently, on February 23, GPO's contracting officer sent Cenveo a cure notice, advising that the firm's inability to produce the envelopes in accordance with the contract specifications was endangering Cenveo's performance, and requesting that the firm represent in writing the measures it would take to cure the deficient performance. Cure Notice, Feb. 23, 2009, Rule 4 File, exh. 15, at BATES 40. In response to the cure notice, Cenveo sent a letter dated February 23 to GPO's representative which presented a recitation of its understanding of the events leading up to the cure notice, and which included the following recommendation:

> Based on my meeting with the [USDA] New Orleans personnel, and the on-site Pitney Bowes technician, it appears that with some adjustment to the inserter the envelopes will run. I was also able to get samples of other existing envelopes that are used at this location.
>
> We should ship the balance of the envelopes as required.
>
> We can change the tooling used, and manufacture the balance of the order with specifications that better match the samples that we obtained while there. If there is an existing die, there will be no additional charges.
>
> We also recommend that for future orders, you examine the possibility of changing the envelope to outside, side seams. This product has proven to run extremely well, especially on high speed equipment. This was

confirmed by the Pitney Bowes technician. We would be happy to provide samples of this product.

Cenveo Letter to GPO, Feb. 23, 2009, Rule 4 File, exh. 16, at BATES 43-44. In response to these recommendations, UDSA advised GPO that the agency did not want the envelopes that had so far been manufactured by Cenveo, stating that the Pitney Bowes technician had explained that the envelopes were out of specification with the Pitney Bowes inserters; that, consequently, they caused many jams; and that any attempt to run the envelopes would require constant adjustment to the inserters because the envelopes were out of specification. E-mail from USDA to GPO with attachment, Feb. 26, 2009, Rule 4 File, exh. 19, at BATES 49-50.

The record shows that, although GPO initially had decided to terminate Cenveo's contract for default, it subsequently gave the firm an opportunity to replace the defective envelopes. Various Internal Correspondence and Records of Telephone Conversations from GPO, Feb. 25-June 12, 2009, Rule 4 File, exh. 21, at BATES 52-55. In response, Cenveo's representative advised the agency that it had purchased tooling that would enable it to fabricate envelopes that matched the samples it had obtained from USDA during its site visit, and that it would replace the defective envelopes. E-mail from Cenveo to GPO, Mar. 3, 2009, Rule 4 File, exh. 22, at BATES 56; Letter from Cenveo to GPO, Mar. 3, 2009, Rule 4 File, exh. 23, at BATES 57.

Cenveo filed a claim with the contracting officer seeking monetary damages associated with its manufacture of some 3,600,500 envelopes. Letters from Cenveo to GPO, Apr. 16, 2009, Rule 4 File, exh. 24, at BATES 58; May 4, 2009, exh. 26, at BATES 60-61. By letter dated July 14, the contracting officer advised Cenveo of her final decision denying its claim. Rule 4 File, exh.27, at BATES 62-64. Thereafter, Cenveo timely filed its appeal with the Board. Rule 4 File, exh. 28, at BATES 65.

DISCUSSION

Cenveo asserts that it manufactured the envelopes in accordance with the Pitney Bowes specifications incorporated into the contract. Cenveo further asserts that, because of various actions on the part of the government (discussed below), including, for example, that it received approval from USDA's representative in connection with the sample carton of envelopes, Cenveo should not be held liable for the subsequent failure of the production quantity envelopes to run in the inserter machines; in this latter regard, Cenveo, in effect, asserts that various actions on the part of the government caused it to manufacture the defective envelopes.

Manufacture of the Envelopes In Accordance With Specifications

Contractors are required to perform in accordance with the specifications included in a contract. See, A&A Insulation Contractors, Inc., VABCA No. 2766, 92-2 BCA ¶ 24,829 at 123,881-82. As noted at the outset, the contract included a detailed narrative description of the envelopes and, most importantly, a reference to the Pitney Bowes specification book that provided a complete, detailed description of the envelopes, along

with detailed drawings, that could be used to manufacture the envelopes within specified tolerances. The contract provided:

> The Envelope Specification Book for USDA along with the flap design, cut and throat cut can be obtained at the following web site:
>
> http://www.pbdmt.com/usda_envelope_specifications.pdf

Purchase Order Issued to Cenveo, Jan. 5, 2009, Rule 4 File, exh. 4, at BATES 11-12. The contract further expressly provided that this specification book would be used as the standard against which any complaints would be evaluated. Id.

In view of the detailed and comprehensive nature of the contract's specifications, along with the fact that Cenveo has not alleged that the specifications were defective or incomplete for purposes of manufacturing the envelopes, the Board sent a set of questions to Cenveo that were directed at discovering what information had been used by Cenveo to initially manufacture the envelopes, and whether Cenveo had, in fact, used the specifications and drawings provided in the contract. The Board's questions, and Cenveo's answers, were as follows:

> Q: Cenveo represents that it received the order for the envelopes on January 12, 2009. The record appears to show that Cenveo received a facsimile from [GPO's contract representative] on January 15 that appears to be a drawing of the 'back' of the envelope (that is, one cannot see the details of the 'throat' of the envelope in that facsimile), and a second facsimile on February 2 that appears to be another drawing that shows the 'inside' detail of the envelope. Were either of these drawings used by Cenveo? If so, which one(s) were used and how were it/they used?
>
> A: The initial drawing [dated January 15] was used with regard to the length of seal flap. Because the back of the envelope was not shown, no specifications could be taken from it. (See attached copy.) The second facsimile, 2/2/09, was sent after the first shipment of envelopes was received and the initial problem was reported to us.
>
> Q: Why did Cenveo request a drawing from GPO in view of the fact that the solicitation/contract included a detailed drawing of, and specifications for, the envelope?
>
> A: The solicitation/contract only specified that the envelopes must meet Pitney Bowes specifications, which they do. However, it is possible to meet inserter specifications with a number of envelope designs. This is why our sales representative had asked repeatedly for an envelope sample [emphasis in original] prior to manufacture so that we could match the previous order exactly. This is standard procedure in the envelope industry. The sample was never provided.

> Q: Why didn't Cenveo use the drawing that had been provided with the solicitation/contract?
>
> A: The only drawing of the envelope only showed the front copy and the size of the flap. The throat specifications were never shown.

Board Questions, Jan. 29, 2010; E-mail from Cenveo, Feb. 3, 2010.

We reach two conclusions. First, based on Cenveo's answers to the Board's questions, we conclude that, although the task order expressly incorporated the Pitney Bowes specification book which included detailed drawings of the envelopes, Cenveo did not refer to those drawings when manufacturing the envelopes, but instead apparently relied on the "camera copy" drawing, the "reprint sample" drawing, and/or the drawing provided by GPO's representative in response to Cenveo's request for a drawing of the flap. These drawings, which depict only the front of the envelope, are the only drawings that Cenveo could have been referring to in responding to the Board's question:

> Q: Why didn't Cenveo use the drawings that had been provided with the solicitation/contract?
>
> A: The only drawing of the envelope only showed the front copy and the size of the flap. The throat specifications were never shown.

Board Questions, Jan. 29, 2010; E-mail from Cenveo, Feb. 3, 2010. We therefore find that Cenveo did not use the drawings included in the Pitney Bowes specification book to manufacture the envelopes.[2]

Second, Cenveo's envelopes were different from the envelopes depicted in the Pitney Bowes specification book and, because of this difference, did not properly function in the Pitney Bowes machines. Compare Rule 4 File, exh. 9 (February 2 drawing depicting the defective envelopes as manufactured), with Pitney Bowes Specification Book at E-6 (depicting the envelopes as they should have been manufactured); see also Rule 4 File, exh. 10, at BATES 25 ("The side seams on both sides of the envelope are not glued all the way to the top and they have this little squared off cut where the envelope meets in the

[2] The Pitney Bowes specification book included drawings that show the configuration of the envelopes, including the dimensions of the various components, the relationship of the components to one another, the minimum and maximum angles to be maintained between the various components, the tolerances required, and other information necessary to accurately manufacture the envelopes, including the configuration of the envelope's "throat" which, as noted, is where the problem occurred.

corners.")[3]

In sum, we find that the record shows that Cenveo, in fact, did not manufacture the envelopes in accordance with the requirements of the Pitney Bowes specification book, and in particular, the detailed drawings incorporated into the contract to manufacture the envelopes. Further, the envelopes manufactured by Cenveo did not function properly when used with the Pitney Bowes inserters.

Other Actions on the Part of GPO and USDA

Given our finding above--that Cenveo's defective envelopes failed to function properly when used in the Pitney Bowes inserters--the remaining question is whether, as asserted by Cenveo, any other action on the part of the government caused Cenveo to manufacture the defective envelopes. In this regard, the essential burden of establishing the fundamental facts of liability, causation, and any resultant injury rests on the contractor; broad generalities that the government must have been responsible for the contractor's failure to adequately perform the requirement are insufficient to meet this basic burden of establishing liability, causation and injury. Dawson Construction Co., Inc., VABCA Nos. 3307, 3308, 3309, 3310, 93-3 BCA ¶ 26,177 (1993) at 130,314. Cenveo's appeal fails to meet its burden.

First, as noted above, in responding to the Board's questions, Cenveo, in effect, asserted that it is "standard industry practice" for the government to have provided a sample envelope. However, notwithstanding Cenveo's position, nothing in the contract contemplated the provision of a sample envelope. As noted, the contract did include a "reprint sample" and a "camera copy" of the envelope, but these were not actual envelope samples and, in any event, did not depict the "throat" area of the envelope where the defect occurred. Simply stated, under the terms of the contract, nothing required GPO to provide Cenveo with a sample envelope. Consequently, there is no basis for us to find that any alleged failure on the part of the government to provide Cenveo a sample envelope caused Cenveo to manufacture the defective envelopes.[4]

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[3] The record also shows that the defective envelopes were not useable to USDA because they constantly jammed the inserter machines:

> On a further note, the NFC [National Finance Center] has checked with the on-site Pitney Bowes technician (Gene) about the possibility of adjusting the inserters to run the already produced envelopes. Per Gene, that is not a practical solution. He would have to make constant adjustments throughout the day to make the inserters handle the envelopes thereby engendering unacceptable delay and waste.

GPO E-mail, Feb. 25, 2009, Rule 4 File, exh. 21, at BATES 55.

[4] If Cenveo thought a sample envelope should have been included with the solicitation/contract package, it should have objected to the terms of the solicitation prior to the deadline for submitting its bid. GPO Printing Procurement Regulation, Ch. XV, Sec. 2, PPRCN 01-01, Apr. 10, 2001.

Second, to the extent that Cenveo may have considered in some manner the drawing provided by GPO to Cenveo in response to its request for a drawing of the envelope flap, Cenveo could not have derived information relating to the "throat" of the envelope from that drawing, since that information was not depicted. As discussed, the problem with the defective envelopes did not involve the envelope flaps, but, rather, the construction or configuration of the "throat" of the envelopes. It follows that GPO's provision of the drawing to Cenveo could not have caused the firm to have manufactured the defective envelopes.

Finally, the fact that Cenveo may have provided a carton of envelopes to USDA in advance of providing the production quantities, as well as the fact that USDA indicated to Cenveo that the sample carton had run successfully, did not result in Cenveo manufacturing the defective envelopes. Nothing in the contract contemplated the submission of samples in advance of Cenveo manufacturing the production quantities for purposes of obtaining either GPO's or USDA's acceptance. Instead, the contract, Rule 4 File, exh. 4, at BATES 12, contemplated the provision of contemporaneously manufactured samples to accompany each production quantity for purposes of the government making a decision with respect to acceptance of each lot. Consistent with that requirement, GPO's representative alerted Cenveo to its apparent failure to include these samples in the first production lot shipment:

> I received word from my customer today that the required blue label samples were not delivered or properly identified in the 1st shipment of this jacket. Departmental Random Copies (Blue Label Samples) are an integral part of maintaining quality control. The contract requires that the samples are selected per the instructions and packaged and delivered with each shipment along with a signed selection certificate.

Rule 4 File, exh. 10, at BATES 25. Thus, the fact that Cenveo, prior to the first shipment, expressed an interest in providing the sample carton, along with the fact that the USDA ran the sample carton through its inserter machines and advised that those envelopes appeared to work without incident, did not relieve Cenveo of its ongoing contractual responsibility to furnish contemporaneously produced, compliant samples and lots on an ongoing basis throughout the life of the contract. Thus, there was nothing in USDA's actions--in running the sample carton in advance of the production lots and advising Cenveo that the envelopes ran successfully through the inserter machines--that altered Cenveo's contractual obligation or caused Cenveo to manufacture the defective envelopes.

In any event, Cenveo has neither alleged nor demonstrated that its sample carton and its production lots were manufactured contemporaneously, or even by the same method or design. It follows that nothing can be inferred about the quality or acceptability of the production lot from the apparent ability of the sample carton to run successfully through USDA's inserter machines. Simply stated, there is no basis for us to find a connection between the sample carton and the production lot that would lead us to conclude that USDA's actions caused Cenveo to manufacture the defective envelopes.

In light of the considerations discussed above, we find that Cenveo has failed to carry its burden of showing that any action on the part of the government caused it to manufacture the defective envelopes.

CONCLUSION

We find that the record shows that Cenveo failed to use the specifications included in the contract to manufacture the envelopes, and that this failure resulted in the manufacture of the defective envelopes. We further find that Cenveo has failed to establish that action on the part of the government caused it to manufacture the defective envelopes, or that there is otherwise some basis to find that the government is liable for the costs associated with its manufacture of the defective envelopes.

The appeal is denied.

Scott H. Riback
Presiding Member

David A. Ashen
Member

Sharon L. Larkin
Member

November 15, 2010