

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

MOTION FOR SUMMARY RELIEF GRANTED: May 16, 2005

GSBCA 16321-COM

INTEGRAL SYSTEMS, INC.,

Appellant,

v.

DEPARTMENT OF COMMERCE,

Respondent.

Richard D. Lieberman and Karen R. O'Brien of McCarthy, Sweeney & Harkaway, P.C., Washington, DC; and Albert Alderete, General Counsel of Integral Systems, Inc., Lanham, MD, counsel for Appellant.

Mark Langstein, Terry Hart Lee, Richard S. Brown, and Kenneth A. Lechter, Contract Law Division, Office of the General Counsel, Department of Commerce, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **NEILL**, and **DeGRAFF**.

DeGRAFF, Board Judge.

Pending is respondent's motion for summary relief. We grant the motion, which disposes of part of the appeal.

Background¹

On March 19, 1998, the Department of Commerce awarded a contract for the Geostationary Operation Environmental Satellite Backup Acquisition, Command, and Control Station (GBACCS) to Integral Systems, Inc. (ISI). The contract contained thirty contract line item numbers (CLINs), including CLINs 29 and 30, which were for two option years of station on-call support. Exhibit 1.

On December 8, 2000, ISI's project manager and Commerce's contracting officer's technical representative signed a document acknowledging final acceptance testing had been completed and Commerce accepted the systems required by the GBACCS contract. Exhibit 30. For the first year after acceptance, station on-call support was to be provided by CLIN 28, which was not an option CLIN. The period of performance of option CLIN 29 was to be the year following the performance of CLIN 28, and the period of performance of option CLIN 30 was to be the year following the performance of option CLIN 29. Exhibit 1.

Section I.5 of the contract is headed, "Option to Extend the Term of the Contract," and reads, in part, as follows:

The Government may extend the term of this contract by written notice to the Contractor within 60 DAYS; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

Exhibit 1.

In a letter dated September 12, 2002, the contracting officer told ISI, "You are hereby notified that Option Items 29 and 30, for Station On Call Support, will not be exercised by the Government." Exhibit 7.

¹ The following facts were contained in the uncontested facts put forward by appellant when it filed its March 18, 2005 motion for summary relief and incorporated by respondent into its motion for summary relief, and were contained in the uncontested facts put forward by respondent when it filed its motion for summary relief. Cited exhibits are contained in the appeal file.

Discussion

In its motion for summary relief, Commerce says it never exercised option CLINs 29 and 30 because it never sent ISI the written notice required to be sent by contract section I.5 in order to exercise an option.

In opposition to the motion, ISI acknowledges Commerce did not “formally” exercise the option CLINs. Appellant’s Opposition to Government Motion for Summary Judgment at 8. However, ISI argues, Commerce exercised the option CLINs by asking ISI to perform work in February, March, April, June, and July 2002. ISI says Commerce wanted this work done “under the two option CLINs,” which shows Commerce “constructively” exercised the option CLINs. *Id.* at 6.

Summary relief is appropriately granted when there is no genuine issue of material fact and the moving party is clearly entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *US Ecology, Inc. v. United States*, 245 F.3d 1352, 1355 (Fed. Cir. 2001); *Olympus Corp. v. United States*, 98 F.3d 1314, 1316 (Fed. Cir. 1996). A fact is material if it will affect our decision, and an issue is genuine if enough evidence exists so the fact could reasonably be decided in favor of the non-movant at a hearing. *John A. Glasure v. General Services Administration*, GSBCA 16046, 03-2 BCA ¶ 32,284 (citing *Celotex Corp.*; *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)). Regarding the argument set out in Commerce’s pending motion for summary relief, there are no material facts in dispute and Commerce is entitled to relief as a matter of law.

An option clause does not obligate the Government to exercise an option. The clause simply gives the Government the discretion to decide whether to exercise an option and unless the contract says otherwise, the Government’s discretion is nearly complete. *Government Systems Advisors, Inc. v. United States*, 847 F.2d 811 (Fed. Cir. 1988); *LaSalle Partners v. United States*, 48 Fed. Cl. 797 (2001); *Aspen Helicopters, Inc. v. Department of Commerce*, GSBCA 13258-COM, 99-2 BCA ¶ 30,581, *aff’d*, 243 F.3d 561 (Fed. Cir. 2000) (table); *Mid-Eastern Industries, Inc.*, ASBCA 53015, 01-2 BCA ¶ 31,471. In addition, “the Government must exercise the option in exact accord with the terms of the contract.” *Freightliner Corp. v. Caldera*, 225 F.3d 1361, 1366 (Fed. Cir. 2000). The exercise of an option, “to be effectual, must be unqualified, absolute, unconditional, unequivocal, unambiguous, positive, without reservation, and [strictly] according to the terms or conditions of the option.” *Civic Plaza National Bank v. First National Bank in Dallas*, 401 F.2d 193, 197 (8th Cir. 1968); *Holly Corp.*, ASBCA 24975, 83-1 BCA ¶ 16,327.

The terms of the contract between ISI and Commerce unambiguously required Commerce to provide ISI with written notice in order to extend the term of the contract to include the optional years of on-call support, and Commerce never provided ISI with any such written notice. Although ISI asserts Commerce “constructively” exercised the options, we have been unable to find any legal authority to support ISI’s position that the Government can exercise an option by doing something other than strictly complying with the terms of the contract which created the option. Because the contract required Commerce to provide ISI with written notice in order to extend the term of the contract to include CLINs 29 and 30, and because Commerce never provided ISI with any such notice, Commerce did not exercise option CLINs 29 and 30 and Commerce’s motion for summary relief is granted.

Granting Commerce’s motion does not dispose of the entire appeal, however. In its complaint, ISI asked for an award of \$324,728, which is the sum of the amounts set out in the contract, as awarded, for CLINs 29 and 30. ISI put forward four theories of relief. First, it alleged Commerce constructively exercised the options for CLINs 29 and 30. By granting Commerce’s motion for summary relief, we reject this argument. Second, it alleged Commerce entered into an implied in fact contract with ISI for the work covered by CLINs 29 and 30. Third, it alleged Commerce constructively changed the GBACCS contract by requiring the work covered by CLINs 29 and 30. Fourth, it alleged Commerce treated the GBACCS contract as part of one single fixed price effort including CLINs 29 and 30. This fourth argument was the subject of ISI’s March 18, 2005 motion for summary relief, which we denied on April 14, 2005. Because Commerce’s motion does not address all of ISI’s theories of relief, granting the motion does not dispose of the entire appeal.

Decision

Commerce’s motion for summary relief is **GRANTED**, which disposes of ISI’s first theory of relief.

MARTHA H. DeGRAFF
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

EDWIN B. NEILL
Board Judge