GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEAL OF:

URBAN SERVICE SYSTEMS CORPORATION	)	
	)	CAB No. D-901
Under Contract No.0120-RD-PW	)	

For the Appellant, Urban Service Systems Corporation, Stuart C. Law, Esq., Law and Murphy. For the Government, Agnes M. Rodriguez, Esq., Assistant Corporation Counsel.

Opinion by Administrative Judge Matthew S. Watson, with Chief Administrative Judge Lorilyn E. Simkins and Administrative Judge Jonathan D. Zischkau, concurring.

OPINION AND ORDER

This matter comes before the Board on cross motions for summary judgment as to entitlement. The motions request the Board to interpret the terms of the contract.

BACKGROUND

Urban Service Systems Corporation ("Urban" or "Appellant") was awarded a five-year contract to provide trash containers and trash pick-up service at designated locations for 14 participating District agencies. (Contract, Special Conditions, ¶¶ 1 and 17).[1] By its terms, the contract was intended to be "a requirements contract with unit firm fixed price based on charge for each pick-up."[2] (*Id.* at ¶ 20)

The services to be provided under the Contract were divided into 12 "Aggregate Award Groups" which could be individually awarded. Prospective bidders were informed that for each Aggregate Award Group:

> Award, if made, will be to a single bidder in the aggregate for those groups of items indicated by 'Aggregate Award Group' herein. Bidder must quote unit prices on each item within each group to receive consideration. In the event no bids are

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[1] The solicitation was initially advertised as an invitation for bids. (IFB No. 8284-AA-23-0-8-RD). The IFB was subsequently canceled on January 19, 1989, and a negotiated contract was executed pursuant to 25 DCMR § 1601 on January 20, 1989.

[2] By implication, the containers are provided without charge.

> received on all items within the Aggregate Group, award will be made to the lowest bidder meeting specifications, quoting on the greatest number of items therein.[3]

(*Id.* at ¶28).

Award Groups II, III, IV and V required 2, 4, 6 and 8 cubic yard trash containers, respectively, to be placed at locations within the District. Each item within an award group specified a separate location for placement of identically sized containers, however, the number of containers varied between items. Urban was awarded all award groups with the exception of Award Group V, 8 cubic yard containers, which was awarded to Consolidated Waste Industries ("CWI"). This appeal concerns Award Group IV, entitled "Containerized Collection - 6 Cubic Yard Containers."

As stated above, although awards were made for entire award groups, each bidder was instructed to quote a price for "each item" within the group, that is, a unit price per pick-up at each separate location designated as separate items within an aggregate group. Paragraph 37.C. specifically directs, with respect to Award Groups III, IV and V, that "[q]uoted unit prices must be inserted in the appropriate blanks of the appendix." Appendix IV relating to Award Group IV contained 340 separate items. Each item specified a location within the District for placement of 6 cubic yard trash containers. In addition, each item specified a pickup schedule for the containers placed at the location designated in the item, requiring from 1 to 5 pickups per container, per week. The appendix contained 340 separate blanks, each requiring entry of an individual "unit price per pick-up."[4] Blanks spaces were only provided to enter prices for the first year of the contract. The IFB stated that "[t]he unit price quoted by the contractor for each item or service shall be the same for all fiscal years." (*Id.* at ¶ 37.F.) The actual price to be paid for services in succeeding years was determined by application of a price adjustment clause. (*Id.* at ¶ 38).

Although each of the items within a single award group required identical sized containers, there was no requirement that the unit price for each item within the award group must be identical. Indeed, if a single price for all containers of a particular size were intended, there would have been no need to require each bidder to enter 340 individual prices for the separate items within the Award Group IV.[5]

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[3] Since bidders "must quote a price on each item in the award group to receive consideration," the application of the last sentence is unclear. It would not appear to be possible to consider a bid which did not quote a price on every item. Nevertheless, Urban did quote a price on every item within Aggregate Award Group IV.

[4] It appears that the "unit price per pick-up" for each item is intended to be a unit price per pickup *per container* consistent with stated price evaluation provision. "The total unit price per pick-up charge is arrived at by multiplying the *charge per container pick-up* x five years x the number of containers x the number of annual collections for each location."

[5] Although Urban bid identical amounts for each item within Award Group IV, a separate price was stated for each separate item.

Award Group VI specified 30 cubic yard containers, but differed significantly from Award Groups III - IV. Each item in Award Groups III - V designated a specific location for placement of each container. Item 1b of Award Group VI, however, provided for placing containers, as required, at undetermined locations. The item required containers at "various locations" and states:

> The Department of Public Works requires 30 Cubic Yard Containers at various construction sites during the year. There may be more than one of these projects going at any one time.

Award Group VIII differed from the other award groups in that it included a mix of 20, 25, 30 and 40 cubic yard containers. In addition, pick-up schedules were not stated for each item, as is the case in other groups. Certain of the items were on a "Per Call Bases [*sic*] Only."

After final negotiations, Urban sent a letter agreeing:

> . . . that if the District's requirements henceforth, calls [*sic*] for additional containers in Award Group IV (six cubic yard containers), Urban Services will provide 8 cubic yard containers, but will bill the District at the 6 cubic yard unit price of $14.14 per pickup.
>
> Finally, Urban Services agrees that if the District decides to reduce the quantities in any of the Award Groups I through IV and VI through XI, by replacing this service and providing Super Cans to service these locations, Urban Services' price for the Super Can collection and disposal service is $1.05 per pick-up.

(Complaint, Exhibit F). The letter, which was accepted by the District, further provides that "[t]his letter shall be deemed to be a part of the Contract as if fully written therein." (*Id.*).

After Urban began performance, the District determined that the trash generated at certain of the locations specified in Award Group IV for which Urban was providing 6 cubic yard containers required 8 cubic-yard containers.[6] For those locations, the District orally directed Urban to remove the containers it had placed under its Group IV contract[7] and directed the Award Group V contractor to furnish 8 cubic yard containers under its contract at the same locations.[8] Urban protested these terminations to the Contracting Officer asserting that it should be permitted to furnish and service collections in 8 cubic-yard containers based on the District's agreement that Urban could substitute the larger 8 cubic yard containers for the required 6 cubic yard containers. The Contracting Officer

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[6] No records are available documenting the basis of the determinations.

[7] Since the Board has determined that the District did not have the right to transfer this work, it is not necessary to determine whether oral, as opposed to written, notice was proper.

[8] In some instances, an 8 cubic yard container which Urban had placed with the approval of the District was replaced by a similar 8 cubic yard CWI container.

responded that the agency's agreement to permit Urban to use 8 cubic-yard containers in place of the specified 6 cubic-yard containers (as long as the District was only charged the unit rate of a six cubic-yard container) was made as an accommodation to Urban, which had an excess inventory of eight-cubic-yard containers. (Complaint, Exhibit C , 2).

DISCUSSION

The Appellant contends that it was entitled to be the sole provider of trash collection services at the locations listed in Award Group IV and its replacement by CWI at any of those locations was improper. In essence, Appellant contends that it had a requirements contract for the trash collection needs of the District at each of the locations specified in Award Group VI. By directing Appellant not to place and service containers at certain locations, the District breached that contract.

The District contends that Urban, under Award Group IV, was not entitled to be the sole provider of trash container services at the specified locations, but rather that Urban was entitled to provide for the requirements of the participating District agencies for 6 cubic yard capacity trash containers anywhere in the District. As an accommodation to Urban, the District contends that it agreed to allow Urban to provide over capacity trash containers. It is the District's position that, if, at a particular location originally specified for a 6 cubic yard capacity container, the District determined that 8 cubic yard capacity trash containers were required by a participating agency during the contract term, the District was required to transfer that item from Urban and place the item with the Award Group V contractor, which the District contends was solely entitled to provide requirements for 8 cubic yard capacity containers, regardless of the fact that Urban agreed to provide an 8 cubic yard capacity at no additional cost.

Although seemingly straightforward, the terms of this contract are ambiguous because various provisions of the IFB may be interpreted to be contradictory. Further, administration was inconsistent with the interpretation the District now offers of the contract's terms.

The Board must read the language of a particular contractual provision in the context of the entire agreement, *United States v. Johnson Controls, Inc.*, 713 F.2d 1541, 1555 (Fed.Cir.1983), and construe the contract so as not to render portions of it meaningless. *Fortec Constructors v. United States*, 760 F.2d 1288, 1292 (Fed.Cir.1985). Thus, we must, if possible, apply an interpretation that accords a reasonable meaning to each of the provisions. *Hol-Gar Mfg. Corp. v. United States*, 351 F.2d 972, 979 (1965). Finally, where an agreement contains general and specific provisions which are in any respect inconsistent, "the provision directed to a particular matter controls over the provision which is general in its terms." *Hills Materials Co. v. Rice*, 982 F.2d 514, 517 (Fed.Cir.1992).

The District's position that the Group IV awarded to Urban establishes a requirements contract for the provision of 6 cubic yard containers required anywhere in the District, and that the contract awarded to CWI for Award Group V establishes a requirements contract for 8 cubic yard containers required by participating agencies anywhere in the District is unsustainable. Not only did the awards to Urban and CWI not state such terms, the administration of the contracts was not consistent with such an interpretation.

No contract exists unless it states all essential terms. *See Owen v. Owen,* 427 A.2d 933, 938 (D.C. 1981); *Second Genesis, Inc.* CAB No. 1100, Feb. 4, 2000, 11 P.D. 7843. The District did not solicit and Urban's contract does not contain a price for placement and servicing of a 6 cubic yard container at any location in the District. The Urban contract only contains prices for placement of containers at specific locations. If the price offered by Urban was to provide and service a 6 cubic yard trash container anywhere in the District, the IFB would have requested a single price for placement and collection of such a container. Instead, the contractor was required to enter a separate price for each location as a separate item. This was not a minor difference or oversight. Bidders were required to enter 340 separate unit prices for Award Group IV alone. As written, prices are only stated for trash collection at the locations specifically listed in the individual items of each award group. If one were to accept the District's interpretation that it could place orders under Award Group IV for a 6 cubic yard container anywhere in the District, it is not clear what price would be paid, since there was no price offered, or accepted, for such a generic placement. In the absence of a price to be charged for 6 cubic yard containers other than at the specified locations, the contract, without amendment cannot be used to meet such requirements. Award Group IV cannot be interpreted as creating a requirements contract for 6 cubic yard containers.

Although the contract for Award Group V is not before the Board, its terms, except for the size and placement of the containers is identical to Award Group IV. The same paragraph soliciting bids for Award Group IV is applicable to Award Group V. (Contract, Special Conditions, ¶ 37.C.). Absent a price term for 8 cubic yard containers at unspecified locations, the contract with CWI similarly cannot be interpreted as a requirements contract for 8 cubic yard containers to be placed at locations not specified in the contract.

Had the District intended to enter into a requirements contract for placement of either 6 or 8 cubic yard containers at any location in the District to be ordered during performance, it certainly could have done so as it did in the following Award Group, VI, which requested a price for 30 cubic yard containers at "various" locations to be determined during performance. (Contract, Services, Award Group VI, 1b.).

From the very start, the District does not appear to have treated any portion of the contact awarded to Urban as a requirements contract. A "Requirements Contract . . . provides for the filling of all actual purchaser requirements of designated District agencies for specific supplies or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor as required." 27 DCMR § 2499.1[9] The District did not place any orders under what it now claims was a requirements contract. The District assumed that the locations set forth in the appendices for which individual prices were required in the bid and incorporated into the contract award were the specifications of a definite quantity contract. Even if one were to treat the items in the appendix as orders under a requirements contract for the 6 cubic yard containers, the direction to cease providing the services which were then placed with the Award Group V contractor did not conform with applicable regulations for termination of orders placed under a requirements contract.

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[9] See also 27 DCMR § 2103.5, "The contracting officer shall procure from . . . [a requirements] contract by placing orders directly with the contractor."

In terminating an order under a requirements contract, the District should first seek a no-cost termination. 27 DCMR § 2105.4. By complaining to the Contracting Officer of the oral transfers of individual items to CWI, Urban clearly rejected any suggestion of a no-cost termination. In the absence of agreement to a no-cost termination, the Procurement Regulations require termination of an order for convenience. (*Id.* at §2105.3). However, the District denies that it terminated any part of the contract. (Answer to Interrogatory 18, p. 14). The District acted in exactly the reverse manner of a requirements contract. Instead of placing orders for services under the contract, the District assumed that all estimated services were ordered, and then placed negative orders against the contract to terminate portions.

Other aspects of the record are also not consistent with the District's position. Although most actions under this contract were oral, Action No. 1, which was in writing, further demonstrates that the District from the very start did not treat the contract as a requirements contract. The contract was entered into on January 20, 1989. Action 1 was signed April 4, 1989.[10] Action 1 purports to delete an individual item from Award Group III (4 cubic yard containers) of Urban's contract pursuant to the "CHANGES clause" (Standard Contract Provisions for Supply and Services, ¶18). If the District had considered each Award Group within the contract to be a requirements contract for the particular size container, action under the Changes clause would be unnecessary. A change would be required only if the contract were a definite quantity contract. Under a requirements contract the absence of a need for the item merely results in failure to place order, not a change deleting the item.

Urban's position is more consistent with the terms of the contract than the District's position. In essence, it is the position of the Appellant that each item within the award group constitutes a requirements contract to pick up containerized trash at a particular location, as necessary. Consistent with this interpretation, Urban agreed to provide the larger containers at no additional cost and to offer a lower price if super-cans were used at a specific location.

Treating each item as requiring the District to place and the contractor to accept all orders for trash collection at specific locations gives meaning to the general provision stating that a requirements contract is intended.

This interpretation also gives meaning to the 340 specific price provisions for each individual item in Award Group IV and allows for consistent application of the clear requirements type terms of Award Groups VI and VIII. Since unit prices were established on a "per container, per pick-up" basis, the prices could be applied to orders to place containers at varying locations and with varying pick-up schedules in Groups VI and VIII..

CONCLUSION

For the reasons stated, the District's Motion for Summary Judgment as to Entitlement is DENIED and the Appellant's Motion for Summary Judgment as to Entitlement is GRANTED.

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[10] No effective date is given.

The Board finds that the most reasonable interpretation of Award Group IV of Urban's contract, giving the greatest consistent meaning to all provisions of the contract, is that it is a requirements contract for the trash collection needs of the participating agencies at each of the locations included in the individual items within each award group.

The Board further finds that by transferring locations served by Appellant under Award Group IV to CWI under Award Group V, the District breached its contract with Appellant. Appellant Urban Service Systems Corporation is entitled to damages for breach equal to the contract price for the items transferred[11] for the period of time Urban was excluded from providing the service, less quantifiable cost savings to Urban as a result of not being required to perform the services.

Within 14 days of the date of this order, the appellant shall serve on the District a computation of damages in accordance with this opinion. Within 21 days thereafter, the District shall advise the appellant of specific disagreements with appellant's computation of damages and serve on appellant a draft consent order stating damages of which the District has no disagreement. No later than 45 days after the date of this opinion, the parties shall file with the Board a joint statement of any continuing disagreements as to computation of damages and a consent order for full or partial damages in this matter.

SO ORDERED.

DATED: April 18, 2000

MATTHEW S. WATSON
Administrative Judge

CONCURRING:

LORILYN E. SIMKINS
Chief Administrative Judge

JONATHAN D. ZISCHKAU
Administrative Judge

[11] The District has admitted that 29 items were transferred from Urban. (Answer to Interrogatory 7, p. 6). Unless the District can present some documentary evidence as to the dates Urban ceased servicing the locations, the Board will accept Urban's records of the date of breach for each item.

Facsimile TRANSMITTAL

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Re: CAB No. D-901, Appeal of Urban Service Systems Corporation
Opinion and Order

Pages: 9, including cover sheet.

Date: April 18, 2000

From the desk of....

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TRANSMISSION VERIFICATION REPORT

TIME : 04/18/2000 16:17
NAME : DC CAB
FAX : 2027273993
TEL : 2027276597

DATE,TIME	04/18 16:10
FAX NO./NAME	93013529742
DURATION	00:06:06
PAGE(S)	09
RESULT	OK
MODE	STANDARD ECM

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DATE,TIME	04/18 16:18
FAX NO./NAME	97270431
DURATION	00:05:34
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MODE	STANDARD ECM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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SUBJECT: CAB No. D-901, Appeal of Urban Service Systems Corporation

Attached is a copy of the Board's opinion and order in the above-referenced matter.

Mia J. House
MIA J. HOUSE
Clerk

Attachment