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Appeal of --	)	
	)	
Colonial Press International, Inc.	)	CAB No. 2008-6
	)	
Under Jacket No. 331-415	)	
Print Order No. 95040	)	
	)	

Appearances for the Appellant: Anthony W. Hawks, Esq.

Appearances for the Government: Roy E. Potter, Esq.
Julie Kelley Cannatti, Esq.
U.S. Government Printing Office

DECISION

Colonial Press International, Inc. appeals the Government Printing Office's (GPO) decision to deduct 25 percent from the price of a contract to print 250,000 pamphlets. The deduction was based on GPO's determination that the pamphlets delivered by Colonial contained various defects, including "failure to follow proof." GPO maintains that delivery of pamphlets that varied from Colonial's proofs with regard to a green screen background on one of the pamphlet pages was a proper basis for its deduction. Colonial maintains that the contract did not require that the delivered pamphlets conform to the proofs. Alternatively, Colonial asserts that its delivery of pamphlets that varied from the approved proofs was caused by defective government furnished material. Both parties have filed motions for summary judgment. We grant GPO's motion and deny the appeal.

BACKGROUND

On September 29, 2006, the National Institute for Literacy (NIL) issued a requisition (Standard Form 1) to GPO which, as modified, requested the printing and delivery of 250,000 copies of a pamphlet titled, "What Content-Area Teachers Should Know About Adolescent Literacy." Rule 4 File (R4), Tab 1. Thereafter, GPO issued an invitation for bids for this requirement. R4, Tab 2. On December 14, 2007, a contract was awarded to Colonial for a price of $155,119.00.[1] Appellant's Complaint ¶ 1; R4 at R-14.

[1] The terms of the contract provided for a 2-percent prompt payment discount that reduced the price to $152,016.62.

With regard to the printing requirements, the contract stated:

> Covers 1 and 4 print head to head with full bleeds all sides, tints/solids, illustrations and fine detail logos/seals in the build of the process colors plus PMS [Pantone Matching System] Green. Some type/line matter reverses out to appear white. Covers 2 and 3 print full bleed solid background in the process colors.
>
> Text – 1st folio page (title page) prints type/line matter and department logos/seals in the build of the process colors. Balance of text prints head to head type/line matter in black and PMS 7489 Green.[2]
> NOTE: Contractor to convert 4 color process to spot on page 50.[3]
>
> Contractor to match the final OK'd proofs or press sheets.

R4 at R-7, R-8.

Regarding submission of proofs, the contract required the following:

> [Submit] [o]ne set of digital one-piece composite laminated color proofs on the actual production stock (Kodak Approval, Screen TrueRite, Dupont Thermal Waterproof, Polaroid PolaProof, CreoSpectrum, or Fuji Final Proof) with a minimum resolution of 2400 dpi [dots per inch] for entire pamphlet.
>
> * * * * *
>
> CONTRACTOR MUST NOT PRINT PRIOR TO RECEIVING AN "OK TO PRINT."

Id. at R-7.

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[2] "PMS 7489" is a particular shade of green under the Pantone Matching System. Appellant's Brief in Support of Cross-Motion for Partial Summary Judgment at 3.

[3] The parties agree that there are differing ways to print colors, including the following: (1) a "4-color process," frequently referred to as the "CMYK process," where varying amounts of ink in the four "process" colors--cyan, magenta, yellow, and black--are separately applied to "convert" those colors to a range of other colors; and (2) "PMS spot color" printing, in which a single color of ink, which corresponds to a Pantone Matching System reference number, is applied. See Appellant's Brief in Support of Cross Motion for Partial Summary Judgment at 3-5; Respondent's Motion for Partial Summary Judgment at 5.

Under the heading "PRESS SHEET INSPECTION," the contract provided:

> Final makeready press sheets will be inspected and approved at the contractor's plant for the purpose of establishing specified standards for use during the actual press run.

Id. at R-8.

Under the heading, "GOVERNMENT TO FURNISH," the contract stated that the government would provide, as government furnished material (GFM), the electronic media necessary for printing the pamphlets, describing the GFM as follows:

> One CD-ROM 700 MB [megabyte] disk generated on Macintosh System using InDesign C2, Quark C2, and Photoshop CS2 in native application format. Printer and screen fonts are included on the disk. One full set of lasers and color separation, plus color visual of Covers to be used as general guide.

Id. at R-6

Following contract award, Colonial produced the required "digital one-piece composite laminated color proofs" using Fuji Final Proof, one of the proofing systems specified in the contract. Joint Stipulation of Facts ¶ 5. Colonial's proofs showed a green screen background on the second, unnumbered page of the pamphlet, which the parties refer to as "folio 2." Id. ¶ 6; Appellant's Brief in Support of Cross-Motion for Partial Summary Judgment at 2. Colonial states that, in creating the color proofs, its proofing system "captured and produced the green screen background on Folio 2 . . . as a CMYK process green."[4] Affidavit of Colonial's Quality Control Representative at ¶ 5.

On December 27, 2007, GPO approved Colonial's proofs. Joint Stipulation of Facts ¶ 6; R4, Tab 7, Proof Report. More specifically, GPO's proof report stated "OK to Print," and further provided: "Contractor to convert build of [PMS] 7489 to spot color on cover 1, cover 4, and page 50 – Spoke [to personnel] at Colonial Press about converting PDF." Id. The final contract specifications included the statement, "Contractor to convert 4 color process to spot on page 50." See R4 at R-7; Appellant's Brief in Support of Cross Motion for Partial Summary Judgment at 3. There is no dispute that the contract did not include a similar statement with regard to folio 2.

On January 10, 2008, GPO conducted a press sheet inspection with regard to a limited portion of the pamphlet (not including folio 2), and waived the press sheet inspection for

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[4] Colonial has further explained that its proofing system "builds PMS colors out of CMYK to show a representation of the PMS color and does not match the true PMS pigments." R4 at R-33.

the remaining portion of the pamphlet (including folio 2). R4 at R-16, R-18, R-46; Complaint ¶ 6. Accordingly, there was no approved press sheet for folio 2.

On or before February 4, 2008, Colonial Press produced and delivered 250,000 copies of the pamphlet to NIL. Joint Stipulation of Facts ¶ 8. None of the delivered pamphlets had a green screen background on folio 2. Id. Rather, folio 2 was printed with a faint black background.[5] Appellant's Motion for Partial Summary Judgment, Ex. 1.

By letter to Colonial dated February 7, 2008, GPO's contracting officer advised Colonial that an examination of the pamphlets revealed five types of defects, including "[f]ailure to follow proof: circle folio 2 shows a green screen background on proof."[6] R4 at R-22. The February 7 letter further advised Colonial that "[t]he order has been determined rejectable," stated that "[t]he Government may require that the order be decreased by up to 25 percent of the invoice billing price," and gave Colonial an opportunity to provide a "written explanation of why this defect occurred." Id.

By letter dated February 15, 2008, Colonial responded to the February 7 letter, stating that Colonial had "investigated the alleged defects," that Colonial had "followed proper protocol," and that Colonial "should not be penalized in the form of a credit." R4 at R-24. In supporting this response, Colonial further stated:

> For this job, the government supplied locked, sealed pdf files. As opposed to "native" files, the standard industry procedure for working with client supplied pdf files is to output the files precisely as they are provided.
>
> The contract for this project noted that only 3 pages (C1, C4, and pg 50) needed to be converted to spot color. As per the contract, Colonial Press converted the CMYK to spot color for pages C1, C4 and 50. The contract did not mention folio 2 as needing to be converted to spot color.

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[5] Colonial explains that the green screen background on the proofs for folio 2 "was built as a CMYK color in the [GFM] files," and that "there was no PMS 7489 Green spot color in the [GFM] files for folio 2." Appellant's Brief in Support of Cross-Motion for Partial Summary Judgment at 4-5; Appellant E-mail to GAOCAB (Feb. 22, 2010). Colonial elaborates that, because the contract provided that Colonial was to print the "balance of text [including folio 2] . . . in black and PMS 7489 Green," R4 at R-7, Colonial printed the final product from the GFM files "precisely as [the files were] provided," see R4 at R-24--which resulted in printing folio 2 with a faint black background rather than the green screen background reflected in the approved proofs.

[6] The agency maintains that there are additional, alternative bases for rejecting the printing job; Colonial disputes the alternative bases. Only the matter of Colonial's "failure to follow proof" is addressed in the motions for summary judgment.

> As such, Colonial Press followed proper procedure in supplying the government with an end product that was in accordance with the government's specifications and contract.

Id.

On April 2, the contracting officer unilaterally issued contract modification No. 1, which imposed a 25-percent reduction of the invoiced billing price. Joint Stipulation of Facts ¶ 15; R4 at R-34. As a result of this contract modification, GPO thereafter deducted the sum of $38,779.75 from a Colonial Press invoice that was due and owing on a separate contract that had been awarded to Colonial. Joint Stipulation of Facts ¶ 15.

On July 1, 2008, the contracting officer issued a formal decision regarding this matter, reiterating the agency's view that the job was rejectable for, among other things, the "failure to follow proof" with regard to folio 2, stating:

> The proofs submitted by your firm contained a build of the process color to produce a screened background to match PMS color 7489 on folio 2. The proofs were signed, authorizing an okay to print for the text pages. The scheduled press inspection for the text pages, including folio 2, was waived by the GPO inspector. Therefore the proofs remain the standard for printing. The printing of folio 2 without screen tint (green) indicates a failure to follow proof.

R4 at R-46.

Thereafter, Colonial filed this appeal.

DISCUSSION

Colonial's appeal of the contracting officer's decision is based, first, on the assertion that, although the proofs it submitted contained a green screen background on folio 2, the terms of the contract did not require Colonial to deliver pamphlets that conformed to the proofs in that regard. We disagree.

It is well established that a motion for summary judgment is appropriate where there are no genuine issues as to any material facts and the moving party is entitled to judgment as a matter of law. Mingus Constructors, Inc., v. United States, 812 F.2d 1387, 1390 (Fed. Cir. 1987). Issues regarding contract interpretation are generally considered to be questions of law, Calif. Fed. Bank, FSB v. United States, 245 F.3d 1342, 1346 (Fed. Cir. 2001), and, as such, are generally amenable to summary judgment. Varilease Technology Group, Inc., v. United States, 289 F.3d 795, 798 (Fed. Cir. 2002).

Here, there is no dispute that, under the heading "PRINTING," the contract stated: "Contractor to match the final OK'd proofs or press sheets." R4 at R-8. Further, there is no dispute that the press sheet inspection was waived with regard to folio 2. R4 at R-16, R-18, R-46; Complaint ¶ 6. Accordingly, pursuant to the terms of the contract, Colonial was required to "match the final OK'd proofs." R4 at R-8.

Finally, there is no dispute that the proofs Colonial submitted, which were "OK'd to print" by GPO, contained a green screen background on folio 2--and that the final product did not. Joint Stipulation of Facts ¶¶ 6, 8.

Notwithstanding these undisputed facts, Colonial asserts that, because GPO did not expressly direct Colonial to "convert 4 color process to spot [color]" on folio 2 (as it did with regard to page 50), Colonial was relieved of its contractual obligation to deliver a product that conformed to the proofs with regard to folio 2.

In interpreting a contract, the fundamental objective is to ascertain the parties' intent and to effectuate the purpose of their agreement; in so doing, the forum must start with the express language in the contract. P.R. Burke Corp. v. United States, 47 Fed. Cl. 340, 346 (2000). Further, the contract provisions must be read as part of an organic whole and in a manner to ensure that no contract provision is rendered inconsistent, superfluous, or redundant. Hughes Communications Galaxy, Inc. v. United States, 998 F.2d 953, 958 (Fed. Cir. 1993); Gould, Inc. v. United States, 935 F.2d 1271, 1274 (Fed. Cir. 1991).

Colonial asserts that because GPO did not instruct Colonial how it was to achieve the result Colonial had previously achieved in the proofs it had created and submitted for GPO's approval, Colonial was effectively relieved of its obligation to deliver a product that "match[ed] the final OK'd proofs." We disagree.

Here, there was no obligation under the terms of the contract for GPO to instruct Colonial on the procedures Colonial was to employ in complying with the contract requirement that the final product must match the previously-submitted proofs.[7] Moreover, Colonial's proposed interpretation would render superfluous the fundamental requirement for Colonial to "match the final OK'd proofs"; accordingly, we find Colonial's interpretation to be unreasonable. In summary, we conclude that the terms of the contract required that Colonial deliver pamphlets that conformed with the previously-submitted proofs regarding a green screen background on folio 2, and that Colonial did not. Accordingly, the agency properly assessed Colonial's performance as defective in this regard.

Alternatively, Colonial argues that the contract provided for another standard, other than the previously-submitted proofs, that should have been applied. In this regard, under the heading, "QUALITY ASSURANCE LEVELS AND STANDARDS," the contract stated:

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[7] In this regard, contract requirements are frequently identified as either "design" specifications or "performance" specifications. A design specification mandates the precise manner in which work is to be performed; a performance specification identifies a required objective and the contractor is expected to select the means for achieving that objective. See, e.g., Blake Constr. Co., 987 F.2d 743, 746 (Fed. Cir. 1993). Here, we view Colonial's obligation to match its previously-submitted proofs as a performance specification, that is, the agency was not obligated to instruct Colonial how to achieve that objective.

Specified Standards: The specified standards for the attributes requiring them shall be:

	Attribute	Specified Standard
P-7	Type Quality and Uniformity	O.K. Press Sheets
P-9	Solid and Screen Tint Color Match	O.K. Press Sheets
P-10	Process Color Match	O.K. Press Sheets

Special Instructions: In the event that inspection of press sheets is waived by the Government, the following listed alternate standards (in order of precedence) shall become the Specified Standards:

P-7	[Type Quality and Uniformity]	Camera copy, electronic media.
P-9	[Solid and Screen Tint Color Match]	Pantone Matching System color.
P-10	[Process Color Match]	Proofs, Gov't furnished sample.

Id. at R-8, R-9.

Colonial argues that, since the press sheet inspection was waived for folio 2, and the basis for the agency's assessment of defective performance involved the absence of a green screen background on folio 2, the contract provisions regarding printing attribute P-9, titled "Solid and Screen Tint Color Match," made the "Pantone Matching System color," itself--that is, PMS 7489 green--the applicable standard. Appellant's Brief in Support of Cross-Motion for Summary Judgment at 8.

Colonial's arguments in this regard confuse the standards against which the tint of a color is measured with the fundamental contract requirement, discussed above, that Colonial "match OK'd proofs." Again, Colonial's proposed interpretation would render that fundamental requirement superfluous and is unreasonable. Rather than replacing the contract requirement to "match OK's proofs," the contract provisions under the heading "QUALITY ASSURANCE LEVELS AND STANDARDS," supplemented that requirement. That is, if the delivered pamphlets had, in fact, contained a green screen background on folio 2, the contract would have established PMS 7489 as the applicable standard (pursuant to printing attribute P-9) for determining whether the actual "Screen Tint Color" was acceptable.[8]

Finally, Colonial asserts that assignment of defects based on failure to follow proof was improper because the electronic files provided to Colonial by GPO were defective in that they did not contain PMS 7489 green "spot color" files for folio 2. Complaint ¶ 15; Appellant's Brief in Support of Cross-Motion for Summary Judgment at 10. As noted

[8] Even if we were to accept Colonial's assertion that PMS 7489 was the applicable standard, which we do not, the delivered pamphlets contained a faint black background on folio 2, without any shade of green. Accordingly, the delivered pamphlets would still have been properly assessed as defective.

above, the contract stated that GPO would provide, as GFM, the electronic files from which the pamphlets were to be printed. However, the contract also incorporated GPO's standard contract terms, including clause 7, "Government Furnished Property," which states:

> The contractor is required to examine the furnished property immediately upon receipt. If at that time there is disagreement with the description or the requirements as presented in the specification (or print order/GPO Form 2511), and prior to the performance of any work, the contractor shall contact the U.S. Government Printing Office . . . and contest the description. (Failure to examine the GFP/specifications and bring any discrepancies to the attention of the Contracting Officer *will not* relieve the contractor of responsibility to perform.)

GPO Publication 310.2 (Dec. 1, 1987). Similarly, the specific terms of this contract stated:

> Prior to image processing, the contractor is responsible for checking files contained on the furnished electronic media to insure that such features as bleeds, register marks, and correct file output selection have been provided for, so as to correctly generate films for printing.

R4 at R-6.

In Colonial's initial response to the agency's notification regarding Colonial's failure to match the proofs, Colonial complained that GPO had "supplied locked, sealed pdf files," as opposed to "native" files; explained that Colonial had "output the files precisely as they [were] provided"; and, accordingly, maintained that Colonial was not responsible for the inconsistency between the end product Colonial had delivered and the proofs it had submitted. R4 at R-24.

Based on this record, it is clear that Colonial knew that the GFM the agency provided would not create a final product that conformed to the proofs--unless Colonial performed the same color conversion process for folio 2 that it had performed in creating the approved proofs.[9] Specifically, Colonial has acknowledged that "since there was no PMS 7489 Green spot color in the [GFM] files for Folio 2, the CMYK build in the [GFM] files first needed to be converted to spot color in order to show the green screen background on Folio 2 as PMS 7489 Green when it was printed." Affidavit of Colonial's Quality Control Representative at ¶ 5. Nevertheless, Colonial chose to output the files

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[9] As noted above, Colonial has expressly acknowledged that, in creating the proofs, Colonial "produced the green screen background on Folio 2 of the Contract Proof as a CMYK process green," Affidavit of Colonial's Quality Control Representative at ¶ 5, and that the proofing system it used "builds colors out of CMYK to show a representation of the PMS color and does not match the true PMS pigments." R4 at R-33.

"precisely as they [were] provided," and did not notify GPO that the files would result in a product that failed to conform to the proofs, as the contract required.

On this record, we reject Colonial's assertion that it was not responsible for the defects. Pursuant to the contract provisions, including clause 7, Colonial was obligated to advise GPO that the GFM provided would not result in a product that conformed to proofs. See, e.g., Appeal of Web Business Forms, Inc., GPOBCA 31-89, 1994 GPOBCA LEXIS 24 (July 22, 1994). It did not.

The appeal is denied.

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Dated: June 15, 2010