

LUCKY LOGGING, INC.,

Appellant

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AGBCA No. 2001-109-2

DECISION OF THE BOARD OF CONTRACT APPEALS

February 21, 2001

Opinion for the Board by Administrative Judge VERGILIO.

Lucky Logging, Inc. (contractor) of Pendleton, Oregon, filed this appeal with the Board on October 19, 2000. The respondent is the U. S. Department of Agriculture, Forest Service (Government). The dispute involves a contract which required the contractor to grapple pile thinning slash and vegetative material within the Lonestar Timber Sale in the Heppner Ranger District of the Umatilla National Forest in Oregon.

The Board has jurisdiction over this timely-filed appeal pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, as amended. On January 25, 2001, the contractor elected the small claims (expedited) procedures, such that this is a decision by one judge, which is final and conclusive and shall not be set aside except in cases of fraud. The decision shall have no value as precedent (outside of resolving this dispute). 41 U.S.C. § 608; Rule 12. Following the receipt of the appeal file and supplements, complaint, answer, and a Government motion, and telephone conferences, it was agreed that the Board would resolve this dispute during a telephone conference. On February 5, 2001, the Board denied the claim. This opinion reduces to writing the decision.

The contractor submitted a claim to the contracting officer to recover \$13,108 and to obtain an extension of time to perform the contract. A contract modification states that the contractor accepts \$2,300 and 2 additional weeks to complete the work as settlement of the claim. The modification states that the contractor's signature serves as a release and the settlement is a complete accord and satisfaction of the claim.

The contractor maintains that the signature on the contract modification is not that of the named individual. The contractor recognizes that the wife of the named individual may have signed the modification (the wife is the owner of the company). The record does not demonstrate that the signature was unauthorized to bind the contractor. This contractor may not void the modification under such circumstances. Moreover, the Government acted in reliance on the signature, as the contractor accepted the benefits of the modification (2 additional weeks to complete performance and \$2,300), and the contractor did not attempt to void the agreement until after the Government had so acted. Duress, mutual mistake, or fraud have not been shown to have occurred regarding the terms of the modification. The record does not provide a basis for the contractor to avoid the effects of the modification.

FINDINGS OF FACT

1. On August 21, 1999, in response to a request for quotations (RFQ), Lucky Logging, Inc. entered into a contract, No. 53-04R3-9-53, with the U.S. Department of Agriculture, Forest Service, to provide grapple piling within the Lonestar Timber Sale on the Heppner Ranger District, Umatilla National Forest in Oregon. The contract established the unit price of \$116 per acre for an estimated 190 acres. (Exhibit 8 at 153 (all exhibits are in the appeal file).)

2. The contract specified that work shall begin no later than 7 calendar days after the effective date of the Notice to Proceed, with work to be accomplished within 37 calendar days (Exhibit 8 at 162 (¶ 10)). During the pre-work conference, the Government provided the contractor with clauses addressing "deliveries or performance." The clause provides, in pertinent part:

Contract time will be accounted for on a calendar day basis, including Saturdays, Sundays, and holidays, and will run continuously from the effective date of the Notice to Proceed to the date of completion of the work, unless work is suspended by the CO [contracting officer]. Work suspensions may be partial or total. Normally, the count of contract time will cease when work is totally suspended. During periods of partial suspension, count of contract time will continue, however, an appropriate adjustment may be made in the contract time. All adjustments in contract time must be agreed to, in writing, by the Contracting Officer.

(Exhibit 5 at 74 (¶ F.1).) The Government issued the notice to proceed with an effective date of September 9, 1999 (Exhibit 5 at 71). Under contract modifications 1 and 2, 35 acres were added at the \$116 rate and the performance period was extended 7 days (Exhibit 8 at 149-50).

3. During performance, various disputes arose. The contractor submitted a claim dated November 30, 1999. The contractor asserted that (1) the job was misrepresented (the actual work required changed after the contractor inspected the site prior to submitting a quotation, and what the contracting officer's representative (COR) identified as representative work proved to be the easiest of that encountered), (2) the COR did not consistently interpret the contract and one unit was not properly flagged or identified, (3) it was entitled to additional time under the contract because of extreme fire conditions which stopped performance in whole or part on given days, and (4) the job would have been completed on time or earlier, had the job been as the contractor believed at the time of award. (Exhibit 2 at 11.) The contractor states that it worked 220 hours at \$116 per hour or acre and received \$12,412 to date. It seeks an additional \$13,108. Moreover, "I also think because the job was more than twice the work I thought I was bidding on[,] I should have been given another 37 calendar days over and above what I was given in the original contract." (Exhibit 2 at 14.)

4. The contracting officer provided the contractor with an informal response by letter dated March 16, 2000 (Exhibit 4 at 37-42). On March 31, 2000, a meeting was held between the Government and contractor in an attempt to settle the dispute (Exhibits 1 at 6, 5 at 117).

5. The Government provided the contractor with a copy of contract modification 3, with a contracting officer signature and signature date of April 3, 2000. The modification states in pertinent part:

This is an equitable adjustment to settle Contractor's claim. Contractor filed a claim on November 30, 1999 and in a meeting held with the Contractor and his Representative . . . in John Day, OR on March 31, 2000, the following was agreed to as a settlement.

The Contractor receives 2 (two) additional weeks of time to complete the work. That time will begin upon issuance of a resume work order, which will be issued by the COR as soon as ground conditions will allow.

Contractor will be paid \$2300.00 for work that was not clearly visible at the time he made his site visit prior to submitting his original quote.

By signature in Block 15B Contractor releases the Government from all claims relating to his claim letter dated November 30, 1999 and this modification. This settlement is complete accord and satisfaction since the terms for this settlement were agreed to in our meeting on March 31, 2000.

(Exhibit 8 at 148 (typographical errors corrected).)

6. The contractor did not immediately return the modification, which required a contractor signature. The Government issued a resumption of work order dated April 13, 2000, with an effective date of April 17, 2000 (Exhibit 5 at 119). The new contract completion date became

April 30, 2000 (Exhibit 5 at 120). On April 24, the contractor had not sent in modification 3; the contractor was still thinking about it, as the COR reported in his daily diary of that date (Exhibit 5 at 121). On April 26, the contractor completed the job to the satisfaction of the COR (Exhibit 5 at 123-24). The contractor completed performance within the time period established by the modification 3 time extension (Exhibits 5 at 119, 8 at 148). On approximately April 28, the Government received the fully signed modification 3 with a signature and date of April 25, 2000, for the contractor. (Exhibits 3 at 24, 8 at 148).

7. On May 8, 2000, the Government became aware that the contractor did not agree with modification 3. On the contract release, to close out the contract, the contractor noted the following reservation: "I do not agree with mod #3. I would like to be paid for everything else on invoice including adm. costs." (Exhibit 5 at 125). Despite the disagreement, the contractor has accepted payment of the \$2,300 (Exhibit 7 at 146).

8. The contractor disavowed the signature on modification 3 for the first time during these proceedings. The individual whose purported signature appears states that he did not sign the modification and had not seen the modification until these proceedings. He states that his wife was not authorized to sign his name on the modification. The suggestions that Government personnel may have signed his name on the modification are not supported by more than conjecture. As of May 8 the contractor knew about modification 3, as it expressed disagreement with the modification, but did not suggest that the agreement remained unsigned (Finding of Fact (FF) 7). Further, the contractor could not produce its copy of the modification as initially received and did not offer a credible explanation for the whereabouts of the document.

9. The contractor contends that the information the contracting officer and COR provided at the meeting of March 31 was untrue, so "I rejected their settlement and sent the C.O. another claim on 7-10-2000" (Exhibit 1 at 6). The alleged untruth involves when the work of another contractor (which impacted the work under this contract) was completed. While the contractor contends that the Government insisted during the meeting that all work of the other contractor was completed prior to the due date for quotations (Exhibit 10 at 2, 6), in a letter dated March 16, 2000, to the contractor, the contracting officer acknowledged that all whip felling would not be completed until the start of the contract (Exhibit 3 at 19).

DISCUSSION

The contractor seeks to void a contract modification. The record provides no support for such action.

The Government received modification 3 with a signature from the contractor. Whomever the actual signer, a signature was placed on the modification which was returned to the Government by the contractor. The record does not demonstrate that the signature was not authorized to bind the contractor. Moreover, the Government acted in reliance on the modification in closing out the

contract. The contractor accepted the benefits of the modification (additional time and money), while the contractor did not dispute the signature on the modification.

Further, the existing record does not establish mutual mistake, fraud, duress, or any reason to permit the contractor to avoid the release or settlement language of the modification. The record does not demonstrate that the Government misled the contractor into signing the modification or regarding the terms and conditions of the modification. If the contractor did not want to be bound by the agreement contained in modification 3, or if the contractor wanted additional time to explore the factual and legal support for its claim, it should not have signed and returned the agreement.

The contract modification specifies that the parties have resolved the claim underlying this appeal; the contractor releases the Government regarding the claim. Given the terms of the contract modification, the contractor is not entitled to additional time or money for its claim.

DECISION

The Board denies this appeal.

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
February 21, 2001