



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 29, 2018

CBCA 5911

J.R. MANNES GOVERNMENT SERVICES CORP.,

Appellant,

v.

DEPARTMENT OF JUSTICE,

Respondent.

Jerry R. Mannes II, President of J.R. Mannes Government Services Corporation, Holland, MI, appearing for Appellant.

Jack R. Cordes, Jr., Anna F. Kurtz and Brian F. Binney, Office of the General Counsel, Federal Bureau of Investigation, Department of Justice, Washington, DC, counsel for Respondent.

SOMERS, Board Judge (Chair).

J.R. Mannes Government Services Corporation (J.R. Mannes) alleges that the Federal Bureau of Investigation (FBI) improperly terminated for convenience its task order because the FBI wanted to “get itself a better deal by performing the work in-house” or to retaliate against J.R. Mannes for a previous appeal. The parties submitted the appeal on the record, under Board Rule 19 (48 CFR 6101.19 (2017)), after appellant elected the small claims procedure, Rule 52. Therefore, this is a single-judge decision; it is final and conclusive and may not be set aside except for reasons of fraud, and it has no value as precedent. I deny the appeal for lack of evidence.

Findings of Fact

In February 2014, the FBI entered into a blanket purchase agreement (BPA) with J.R. Mannes. In August 2015, the FBI issued a solicitation for process analyst services to support the Vulnerability and Compliance Support Unit's Mainframe Team. This team granted and administered user access to applications hosted on the FBI's mainframe computer. J.R. Mannes timely submitted a proposal, and the FBI awarded appellant the multi-year task order. An employee of J.R. Mannes began working under the task order on October 19, 2015.

In late February or early March 2017, because the FBI planned to retire the mainframe system, a unit chief identified contracts that would be unnecessary and should be terminated. Because J.R. Mannes' task order supported this system, the FBI decided to end the contract after the first option year. During a transition between two contracting officers, the FBI exercised the second option year by mistake. Realizing the error, the contracting officer deobligated the funds for the second option year through a unilateral modification. The contracting officer sent the modification to J.R. Mannes on June 15, 2017, stating that the FBI had "determined that Option Year 2 . . . will not be exercised because of funding restraints."

J.R. Mannes responded on June 23, 2017, stating that the modification "constitute[d] an improper termination for convenience" because a bad faith termination would entitle it to its "anticipated profit." On July 21, 2017, J.R. Mannes filed "a formal claim [for \$53,139 in] lost profits."

On September 5, 2017, a second contracting officer terminated the task order for convenience. On October 12, 2017, the contracting officer explained to J.R. Mannes that its claim for lost profits had been submitted prematurely, before the contract had actually been terminated. He asked J.R. Mannes to either agree to a no-cost settlement or submit a settlement proposal. When J.R. Mannes failed to receive a contracting officer's decision, it appealed. The Board docketed the notice of appeal and complaint on November 6, 2017. On December 7, 2017, appellant moved for expedited disposition of his case under Rule 52.

Discussion

The Government can terminate a contract for convenience when it is in its best interests. *See Securiforce International America, LLC v. United States*, 879 F.3d 1354, 1365 (Fed. Cir. 2018) (finding it "entirely reasonable—and not an abuse of discretion—for the government to decide that [terminating the contract rather than seeking a waiver under the Trade Agreements Act of 1979] was in its best interests").

Appellant alleges that the Government acted in bad faith when it terminated the contract for convenience. In response, the FBI says that it terminated the contract because it no longer needed a contractor to support a mainframe computer system that the FBI planned to retire in 2018. Also, the FBI chose to eliminate this contract, as well as others, due to funding constraints.

Appellant's evidence does not rebut the FBI's defense. J.R. Mannes alleges that the FBI acted in bad faith in response to a previous claim on another contract. It cites an unsworn letter of December 2017 of appellant's former employee as evidence of bad faith:

Sometime during the latter half of February 2017, I was instructed by [the contracting officer's representative] to train [an FBI civilian employee] to perform my duties. I inquired if there was a problem, to which she replied, "Did you know that your company is suing the FBI?" I asked her if my employment was in jeopardy. She intimated that I may wish to seek-out employment elsewhere. My initial and enduring reaction to her question and comment is that the contract which I was performing was being targeted for termination because of legal actions J.R. Mannes initiated on an unrelated FBI contract.

However, in order to establish bad faith, J.R. Mannes must provide evidence sufficient to rebut the "long-recognized 'presumption that government officials act in good faith.'" *Freeman v. United States*, 875 F.3d 623, 630-31 (citing *Am-Pro Protective Agency, Inc. v. United States*, 281 F.3d 1234, 1239 (Fed. Cir. 2002)). J.R. Mannes' evidence is insufficient to overcome that presented by the FBI. The FBI's sworn declarations from the contracting officer's representative and the unit chief explain that the declarants did not know about J.R. Mannes' other claims until J.R. Mannes filed its claim in July 2017, much later than alleged in appellant's unsworn statement. The declarations provide details, making them more persuasive and believable. By contrast, J.R. Mannes' evidence does not establish the bad faith necessary to establish an improper termination for convenience.

In addition to alleging bad faith, J.R. Mannes argues that it and its subcontractors have been subjected to reprisals, including obstructing it from winning other task orders and from adding other subcontractors. Because these allegations are different from those presented in its claim before the contracting officer, I do not possess jurisdiction to entertain them. *See Lee's Ford Dock, Inc. v. Secretary of the Army*, 865 F.3d 1361, 1369 (Fed. Cir. 2017) ("the Board may not consider 'new' claims a contractor failed to present to the contracting officer.").

Decision

The appeal is **DENIED**.

Jeri Kaylene Somers
JERI KAYLENE SOMERS
Board Judge