

NEITHER CONTRACTOR NOR GOVERNMENT MAY UNILATERALLY CHANGE PAYMENT TERMS ON HOUSEHOLD GOODS SHIPMENTS

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The Court of Claims recently made an unsurprising ruling in a case involving the transportation of 2,532 shipments of household goods for the Department of Defense (“DOD”), ruling that neither party had a legal right to alter the payment terms of the contracts. The court denied both contractor and government motions for summary judgment, and directed that payments be adjusted in accordance with the contract. *Platinum Serv., Inc., v. United States*, No. 18-1539 (Fed. Claims August 17, 2023).

DOD shipping offices collect offers, known as “tenders” to ship household goods (“HHG”) from transportation providers such as Platinum. The government uses the available tenders to place orders via the issuance of a government bill of lading (“GBL”) which memorialize the government’s acceptance of an active tender to ship HHGs. The GBLs contain instructions and details to the contractor, payment terms, and are chosen by the government on a best value basis. The parties agreed that the result of this process were valid contracts that were performed in full.

Platinum however billed the government pursuant to standard closed van trailers rather than the flatbeds listed in the tenders. Platinum argued that it had the right to bill the government pursuant to the more expensive vans because it had a duty to protect the shipments from the elements, and thus closed van transportation was necessary and appropriate. Platinum invoiced the government for \$5 million, a significant inflation (by a factor of nearly 10) of what it would have cost if billed pursuant to the tender rates referenced in the GBL. The government performed an audit prior to payment and determined it had been overcharged by \$4.4 million based on the difference between tenders associated with the equipment type ordered and that which was provided. DOD then chose to apply a special “Alternation of Rates” policy which it asserted gave it the right to choose the lowest rates available *even if not listed in the GBL*. The result was that Platinum was paid \$400,000, or \$4.6 million less than what it had invoiced. Platinum claimed \$4,669,000 and this was the amount the court considered.

The Court made the following holdings:

- 1) Platinum does not have the right to unilaterally change the terms of the contract.
- 2) The Government does not have the right to change the contract terms by reducing payment (“alternate”) to Platinum’s lowest rate on file in the national tender base, even if that rate wasn’t in the GBL. (The government cannot pay an alternate rate, if that results in a lower rate even after DOD orders a higher level of service).

Both motions for summary judgment were denied by the Court, and the parties were directed to confer and determine the proper payment under the GBL’s payment rate. Platinum is not entitled to any amount above the GBL, nor is the government able to alternate below the contract (GBL) price.

Takeaway. Even in HHG shipments, which use a complex rate and contract-establishing method, both parties are bound to the agreement in the GBLs.

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