ANOTHER SAD STORY OF MISPLACED RELIANCE ON A CONTRACT SPECIALIST AND IMPROPER EXERCISE OF OPTIONS

This blog has frequently discussed cases supporting the strong principle that the federal government has given the authority to enter into and modify contracts to only a limited class of government employees: namely, contracting officers. Federal Acquisition Regulation ("FAR") 1.601(a). This section grants to agency heads the authority to contract for supplies and services and requires that "[c]ontracts may be entered into and signed on behalf of the Government only by contracting officers." Also note that FAR 43.102 states that "Only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government." Other Government personnel are prohibited from executing contract modifications. *Id.* See also *Winter v. Cath-dr/Balti Joint Venture*, 497 F.3d 1339, 1344 (Fed. Cir. 2007).

Now comes another case in the sad litany of misplaced contractor reliance on a contract specialist who promised that an option was exercised, but could not lawfully exercise it. The situation reminds me of an agency email that contained the following signature block:

> Jennifer Doe
> Contract Administrator
> [Agency]
> Phone
> Email
>
> I am a contract specialist providing
> support services to [Agency],
> with no authority to contractually bind
> or obligate the Government.
> My correspondence is for coordination
> and information gathering purposes only.

If only the General Services Administration ("GSA") contract specialist had used that signature block on his email, perhaps the contractor would have had a better chance during its contract administration. Instead, the contractor relied on a contract specialist, to its detriment, and found itself without an option that it thought the government had exercised. *First Crystal Park Associates LP v. United States,* 130 Fed. Cl. 260 (2017).

In the GSA leasing world, guidance is provided by the Public Building Service ("PBS") Leasing Desk Guide. The guide identifies "lease contracting officers" (with authority similar to that in FAR 1.601, and "leasing specialists" or "lease contracting specialists" who are permitted to "perform all duties that do not legally obligate the government." (If this sounds like Ms. Jennifer Doe, in the signature block above, rest assured it is). First Crystal and GSA entered into a lease for office space, with one five year renewal option.

When time came to renew the lease by exercising the option, the lease specialist wrote to First Crystal in an email and stated that this email "is hereby official notification that the government exercises its renewal action" (i.e. , exercises the option) and that a supplemental lease agreement ("SLA") would be sent to follow up. The leasing specialist's email, however, requested that First Crystal agree to terminate the 3d floor portion of the lease, which was included in the option.

The supplemental lease agreement was never issued, and the Department of Defense (the tenant in the building) advised GSA that it no longer needed the space. When the leasing specialist advised First Crystal that the option would not be exercised, First Crystal told the leasing specialist that GSA had *already exercised* the renewal option. However, the Contracting Officer concluded that the option had not been exercised, and no rent payments would be made after the lease expiration date. GSA then vacated the building. When First Crystal submitted a claim demanding the exercise of the option, the Contracting Officer issued a final decision stating that the lease had not been renewed because the contract leasing specialist did not possess proper authority to exercise a renewal option. The claim denial was appealed to the Court of Federal Claims.

The Court made short work of First Crystal's claims. First, even if the contract leasing specialist had authority to renew the lease, he had not accepted the exact terms of the option—instead he had attempted to renew less than the square footage that was in the option. (As readers well know, the government can only exercise an option in exact accordance with its terms—any changes require the concurrence of the lessor). Further, the specialist had no authority to modify the existing lease or bind GSA to a new one. The court noted that both parties, in their emails, clearly understood that there would be no final binding option exercise until the parties executed a supplemental lease agreement, which never happened. And finally, the contract specialist had no "implied authority" to modify the lease or enter into a new lease, because such actions are not included in a specialist's authority in the regulations (the PBS Desk Guide). The court concluded that GSA never entered an enforceable agreement to modify the existing lease or enter a new lease, and First Crystal lost its option.

Takeaways: Be professional with all members of the government's team. Be courteous. Be pleasant, but do not believe that any contract specialist has any authority that exceeds what the FAR states—only a properly warranted contracting officer can enter into or modify a U.S. Government contract. Exercise caution when dealing with specialists. Contract specialists may write whatever they choose in their emails or other correspondence, but without the signature of the Contracting Officer, those documents are most likely not worth anything to the contractor. Always insist that a proper Contracting Officer execute any contract, any change order, any option exercise, or *anything that obligates the government to anything, including the payment of money.*