

WHAT HAPPENS WHEN AN AGENCY ISSUES ORDERS UNDER A REQUIREMENTS CONTRACT, THEN REDUCES QUANTITIES AND PARTIALLY DE-OBLIGATES FUNDS?

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The Air Force (“USAF”) awarded Vectrus Systems Corp. (“Vectrus”) a task order against a commercial items contract that contained several Contract Line Item Numbers (“CLINs”) associated with housing maintenance. After the order’s performance period was over, the USAF de-obligated funds on several CLINs using a bilateral modification. *Vectrus Sys. Corp., ASBCA* No. 63239, January 4, 2024. Vectrus filed a claim asserting that funds should not have been de-obligated, and argued that it was entitled to the total task order award amount. The decision was mixed, depending on the type of pricing that was in the various CLINs and the issue of whether a release applied.

Release/Waiver

The government initially argued that Vectrus waived its claim in a bilateral modification. Vectrus countered by noting that it never agreed to a modification containing explicit waiver language. The Board noted that because there was no specific waiver or release language in the bilateral modification that Vectrus signed, it therefore had not waived its claim in the modification.

Claim for full amount in task order

Vectrus claimed it was entitled to the full amount in Task Order 63, because it was a fully funded, fixed price contract that set forth definite, not estimated quantities. The Board examined the actual requirements contract (as well as the task order). The relevant CLINs were designated as “cost” CLINs, with no fixed price—only an estimated quantity and cost. This indicated that these CLINs were cost reimbursable, despite the designation of fixed price. The Board concluded that when the entire contract and task order were read together, the only reasonable reading was that these were not fixed price CLINs, and the full amount wasn’t owed.

Other task order

There was another task order under a different CLIN than discussed above (for “over and above work”). Because there was different language in the task order, and because the government failed to explain why it should not pay the full amount set forth in the task order, the Board granted judgment to Vectrus.

Remaining CLINs

On remaining fixed price CLINs, Vectrus still sought the total amount in the order, even though it was not fully performed them. Here the Board considered that this was actually a partial constructive termination for convenience, and ruled for the government. The Board noted that a constructive termination for convenience in a commercial items task order still required the calculation of the proper termination costs. These costs had to be calculated later by the parties in a later proceeding.

Takeaway: In a partially performed task order, the Board will look at the language of the task order and underlying contract. A fixed price order must be paid in full, but if portions of a cost type task order are deleted, this will be treated as a partial termination for convenience.

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