

GOVERNMENT CAN BREACH DUTY OF GOOD FAITH AND FAIR DEALING IN INDEFINITE QUANTITY CONTRACT EVEN WHEN IT ORDERS THE MINIMUM QUANTITY

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In an interesting case about an Indefinite Delivery, Indefinite Quantity (“IDIQ”) contract awarded by the Department of Veterans Affairs (“VA”), the Civilian Board of Contract Appeals denied several arguments of the contractor alleging breach of contract, but refused to dismiss the claim and complaint because even if VA didn’t breach express provisions of the contract, the VA violated the implied duty of good faith and fair dealing. *Alexander CPA PLLC v. Department of Veterans Affairs*. CBCA 7718, March 18, 2024. The case involves a contract where a third party contractor seeks reimbursement from commercial insurers who provided non-service connected medical care. The contract is to determine appropriate collections and pursue any money owed to the VA.

Alexander alleged that VA’s delays and mismanagement hampered its ability to earn contingency fee through “recovery audit services” called for in the contract. The VA denied that claim entirely. First the Board noted that Alexander abandoned its request for failure to issue task orders. Second, the Board explained that ordering the minimum quantity in the contract does not conclusively end the VA’s obligations. (Discussing *Travel Centre v. Barram*, 236 F. 3d 1316 [Fed Cir. 2001], which seemed to imply that ordering the minimum quantity was only the only government duty, but this was not the full holding) the Board noted that the government can breach an IDIQ contract’s *implied* duty of good faith and fair dealing despite having ordered the minimum. The Board also held that the VA had not incorporated the VA financial policy in the contract, and had no duty to compromise debts.

Finally, however, the Board refused to dismiss the appeal with prejudice, and noted that the VA had failed to address all aspects of the case. Specifically, the VA had not addressed the implied duty of good faith and fair dealing, and the contractor’s expectations that VA’s actions had hindered, delayed, accelerated or failed to cooperate with the contract work, used unfair ordering procedures, and/or abused discretion reserved to it by contract terms.

Therefore, although the Board dismissed part of the complaint, it retained the allegation of breach of the VA’s implied duty of good faith and fair dealing.

Takeaway. In an IDIQ contract merely purchasing the minimum quantity required is not the only duty of the government. The government must still, in all other respects, conduct its duty with good faith and fair dealing, and this alone may provide the basis of a breach of contract.

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