

AGREED UPON CONTRACT TERMS MUST BE ENFORCED

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There is a long line of precedent which has established that contract terms that are agreed upon by the parties must be enforced. See *Madigan v. Hobin Lumber Co*, 986 F.2d 1401 (Fed. Cir. 1993). Recently, the Civilian Board of Contract Appeals (“CBCA”) used this precedent to enforce a contract for property leased to the General Services Administration (“GSA”). *13151 W. Alameda Pkwy, LLC vs. General Services Administration*, CBCA 7126, August 27, 2021.

On May 4, 2000, GSA and 13151’s predecessor in interest executed a lease for property in Colorado. The lease had two important clauses:

- 1) Lessor shall furnish the contracting officer with copies of all notices...of tax bills. All such documents are due within ten calendar days of receipt except that the proper invoice and evidence of payment shall be submitted within 60 calendar days after the date the tax payment is due from the Lessor to the taxing authority. **Failure to submit the proper invoice and evidence of payment within such time frame shall be a waiver of the right to receive payment resulting from an increased tax adjustment under this clause.**
- 2) In the event of an increase in taxes over the base year, the Lessor shall submit a proper invoice of the tax adjustment including the calculation thereof together with evidence of payment to the contracting officer. **The government shall be responsible for payment of any tax increase over the base year taxes only if the proper invoice and evidence of payment is submitted by the Lessor within 60 calendar days after the tax payment is due from the Lessor to the taxing authority.** [bolding as in original]

In 2018, the county assessed a real estate tax which exceeded the tax base amount. Payment of that amount in full was due on April 30, 2018. 13151 paid the tax in full on March 16, 2018. However appellant invoiced GSA for the excess real estate tax on July 29, 2018. Because GSA did not have a record of receipt of that invoice, the appellant resubmitted a second invoice on December 4, 2018. GSA refused to pay the excess over the base amount and denied a claim for that amount.

The CBCA concluded that appellant failed to submit to GSA an invoice for its payment of excess real estate taxes within 60 calendar days of the date payment was due, which was April 30, 2018. Under the terms of the lease, appellant was on notice that it would not be paid unless it submitted a timely request. *Both* invoices that appellant submitted were late under the terms of the lease. The Board denied the entire claimed amount in the appeal, noting that the lease contract was clear in warning the contractor that it would lose its rights if a submission was not made in the prescribed period of time, and should be strictly enforced.

Takeaway: Once a contractor and a contracting officer sign a contract, the terms will be enforced. About the only way around the terms are if they are ambiguous, and the ambiguity was not known prior to the signing of the contract. **READ AND HEED** your contract.

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