

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

In the Appeal of SUBURBAN UNIFORM )  
COMPANY ) Docket No. MSBCA 1613  
Under DGS Contract P-63114 )

April 6, 1992

Contract Interpretation - Appellant's interpretation of contract provisions was found to be unreasonable. Such provisions did not authorize shipment of goods.

APPEARANCES FOR APPELLANT: Randolph C. Knepper, Esq.  
Levin & Gann, P.A.  
Baltimore, MD

APPEARANCE FOR RESPONDENT: Michael P. Kenney  
Assist Attorney General  
Baltimore, MD

OPINION BY MR. PRESS

Appellant timely appeals the Department of General Services (DGS) decision to terminate a contract for default for the purchase of work jackets for the Maryland State Police (MSP).

Findings of Fact

1. On October 17, 1990, Appellant was awarded a requirements contract to supply work jackets for the use of the MSP-Drug Enforcement Bureau during the period October 15, 1990 through October 14, 1991.
2. The contract states: "Quantity(s) stated is an estimate only, and should not be construed as any minimum or maximum guarantee. The contract shall be for the actual needs of the agency, and may vary appreciably from the stated estimate(s). Releases shall be made as requested by the using authority on an "AS-REQUIRED" basis.

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Duration: contracts shall remain in effect for the time period and quantity specified unless the contract is terminated by the

Bureau. The Bureau may terminate any contract without showing cause upon 30 days written notice to the contractor."

3. Attached to the contract is a specification sheet which provides as follows:

JACKET, RAID - SPECIFICATIONS

Lightweight 100% Nylon Windbreaker

3/4 length style with standard collar, snap closure front, bottom draw string.

Elastic around cuffs

Color - Black

Two front pockets

To have silk screened in white letters on front left breast in circular pattern: BUREAU OF DRUG ENFORCEMENT

To have 4" white letters of reflective material such as 3M Scotchlite fabric sewn on back of jacket to read as follows: POLICE<sup>1</sup>

Sizes to be medium thru X-large

Sample must be provided for approval upon request. (emphasis added)

Such as MVP Corp., Bay Shore, NY - Style WPL11590 OR EQUAL.

4. Mr. Warren Michelson, Appellant's President, and First Sergeant Dominic A. Balsoma, of the MSP Supply Division, were to further confer pertaining to the type of lettering, for the circular pattern on the front of the work jacket, but this was not accomplished.

5. On December 14, 1990, Appellant forwarded a sample work jacket, with stitched lettering of "State Police" on the rear of the jacket. Sergeant Balsoma delivered the sample work jacket to his superior and the Drug Enforcement Bureau for evaluation and they concluded that the submitted work jacket did not meet their expectations due to workmanship and appearance of the lettering.

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<sup>1</sup>The parties orally agreed to change the back of the jacket to read "STATE POLICE" at an additional nominal cost.

On January 28, 1991 by letter Sergeant Balsoma requested Miss Linda Ruley, DGS Buyer, to cancel the contract.

6. Notwithstanding that MSP had requested that the contract be cancelled, Appellant shipped 99 work jackets to MSP on February 4, 1991. Upon receipt they were returned unopened on the instructions of Sergeant Balsoma.

7. Upon receipt of MSP's request to cancel the contract, Miss Ruley evaluated the sample work jacket and lettering and concluded it met the contract specifications. It was her opinion as stated in a memorandum to Sergeant Balsoma dated May 2, 1991, that Appellant had performed the contract according to specifications, and upon screen printing of logos, Appellant must be paid. However, she stated at the hearing that MSP did not agree with her, as to the lettering on the back of the work jackets.

8. Appellant contends he was never required to furnish a complete lettered sample work jacket. Appellant concluded that to have furnished a complete lettered work jacket was cost prohibitive and DGS was aware of his practices. Appellant further alleges that in January, 1991 he or his representative requested of Sergeant Balsoma for the style of lettering and size of the logo for the front of the work jackets.

9. Appellant acknowledges that the work jackets were shipped minus the required logo. Appellant asserts that this was due to an oversight and has always been willing to correct this error, if given the opportunity.

10. In late March, 1991, Appellant, Sergeant Balsoma and Miss Ruley met. She attempted to remedy the situation and save the contract, but this was not accomplished. Appellant requested of the Sergeant the type of lettering for the logo which again was not provided.

11. Appellant's President testified that the contract did not require approval of the sample work jacket, and believed he could deliver all the jackets without such approval. He testified that he was merely accommodating MSP by sending a sample. Appellant

further testified that the contract authorized him to ship all 100 jackets without approval or instructions from the MSP as to the number of stated sizes needed and that it was never his intention to furnish a totally finished jacket with all lettering and the required logo.

12. On May 10, 1991, Appellant was forwarded a letter of default termination and denial of payment pursuant to paragraph 19 of<sup>2</sup> the contract purchase order.

#### Decision

Appellant was required to await approval of the sample work jacket by MSP prior to shipment. The sample work jacket was not approved. The Board recognizes MSP could have accepted the work jackets but chose not to. We further recognize there is a dispute between agencies relative to the products compliance with DGS concluding that the sample work jacket lettering meet the specifications and MSP concluding it did not. We find from the record as a whole that the work jacket lettering workmanship did not meet the specifications.

We further find that Appellant misinterpreted the contract in his belief that it allowed him to ship 100 jackets when in fact the contract provides: "Quantity stated is an estimate only and should not be construed as a minimum or maximum guarantee. The contract shall be for the actual needs of the agency (MSP) and may vary appreciable from the stated estimates."

Accordingly, the termination for default is sustained and MSP is not liable for the cost of this procurement.

Dated: April 6, 1992

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<sup>2</sup> 19. Termination for Default.

When the contractor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of the State. Failure on the part of a contractor to fulfill contractual obligations shall be considered just cause for termination of the contract and the contractor is not entitled to recover any costs incurred by the contractor up to the date of termination.