UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

CIVIL ACTION NO. 00-688-JBC

SIEMENS BUILDING TECHNOLOGIES, INC.

PLAINTIFF

VS. **MEMORANDUM OPINION AND ORDER**

BTS, INC. DEFENDANT

****

This matter is before the court upon the plaintiff's motion for summary judgment (No. 10). The court, having reviewed the record and being otherwise sufficiently advised, will grant the motion in part and deny it in part.

Factual Summary

In April 1999, the plaintiff, a subcontractor which had been awarded a contract to install the fire alarm, television, computer network, and telephone systems for the Custer Elementary School in Breckenridge, Kentucky, invited the defendant to submit a bid for the telephone system and cable installation work required to complete the project. The defendant's initial bids indicated that it would install the telephone system for $7,964.10 and would provide the cable for $26,084.41, for a total bid price of $34,048.51. On May, 24, 1999, Kevin Smith, an employee of the plaintiff's, contacted the defendant and asked for labor costs to be deducted from the bid on the cable work. After such revision, the total bid price was $29,545.00. None of the defendant's bids included a quotation for the

computer systems, as it had been specifically told by Kevin Smith that its quotation should exclude them.

In late May 1999, the plaintiff sent the defendant a contract (the "Subcontractor Agreement Form") and a purchase order. The purchase order indicated that the plaintiff would pay the defendant $29,145.00 (four hundred dollars less than the defendant's lowest bid price) for "Telephone and Computer Network Systems per plans and specifications." The contract, however, was more specific. It indicated that the plaintiff wanted the defendant to provide the "Telephone & Computer Network Systems work called for under items Specification sections 16740, 16960 and Index Drawing(s) E-Series." The contract also provided that the defendant agreed to provide "all labor, materials, and equipment and perform all the work for the above described parts and divisions of work and materials specified in the prime contract...." Furthermore, the contract stated that "[t]he said prime contract, its drawings, and specifications are hereby made a part of this contract." The defendant signed the contract and the purchase order and returned them to the plaintiff.

Prior to signing the contract, the defendant received a copy of all of the specifications for the project. The specifications for section 16960 described the project as one that included the installation of cable systems, patch panels, and, most importantly for purposes of this motion, "active equipment." Although the specifications did not later refer to "active equipment" they did refer to "active components" which included, among other things, cable, faceplates, and thirty computer units (with monitors, software, and hardware).

After signing the contract, the defendant began work on the project, providing approximately 24,000 feet of cable worth $12,762.40 on July 8, 1999. On or around August 23, 1999, the general contractor of the project, Faris & Faris Electric Co., notified the defendant that its submittal for the Computer Network System did not include the active components specified in specification section 16960. The defendant then received an inquiry from the plaintiff's branch manager, Alan Lewis, on the defendant's pricing for the active components; the defendant communicated that it would provide those components for an additional $140,428.00. Then, by letter to the defendant dated October 12, 1999, the plaintiff claimed that the defendant was in default of the contract and that a replacement subcontractor would be found if the defendant did not agree to provide the computer systems at the agreed contract price within five days. The defendant responded that it was not in default and that it was ready to complete installation of the telephone system and the cable; it also asked when it could expect payment for the cable that the plaintiff received in July. Finally, in a letter dated October 22, 1999, Lewis explained that the plaintiff considered the defendant to be in breach of the contract because it had not supplied the active components for the computer network system in accordance with section 16960 and that it would hire another company to complete the work if the defendant did not proceed with installation of the active components within five days. On October 27, the defendant again insisted that it was not obligated to provide the active components for the computer system. As a result, the plaintiff contracted with another supplier (i.e., Matrix Integration) to complete the telephone and computer systems for $105,329.00,

$75,529.00 of which represented the price of the active components. The plaintiff also bought $7,920.00 worth of cable from a third party (i.e., Graybar) to complete the project.

Analysis

The construction, meaning, and legal effect of a contract is a matter of law for the court to decide where the terms of the contract are unambiguous. *Industrial Equip. Co. v. Emerson Elec. Co.*, 554 F.2d 276, 284 (6th Cir. 1977)(applying Kentucky law).[1] Whether the terms of a contract are ambiguous is itself a question of law properly resolved by the court, *Kennedy v. Owosso Group*, 134 F.3d 371, 1998 WL 30801, at *4 (6th Cir. 1998), based on whether the contract is reasonably susceptible to two different constructions. *Travelers Indemnity Co. v. Pray*, 204 F.2d 821, 823 (6th Cir. 1953).

The terms of the contract here, as a matter of law, unambiguously stated that the defendant would provide "all labor, materials, and equipment and perform all the work" for the project "as specified in the prime contract" and the relevant drawings and specifications. The contract incorporated the prime contract and its

[1] Although the defendant states that the plaintiff's motion for summary judgment is premature, since the only discovery completed so far consists of the plaintiff's answers to the defendant's interrogatories and requests to produce, the defendant does not identify what further information it anticipates uncovering through additional discovery which might affect the court's interpretation of an otherwise unambiguous contract. It is important to note in this regard that the defendant does not claim that the contract was a product of mistake or fraud. Since Fed. R. Civ. P. 56(a) permitted the plaintiff to move for summary judgment 20 days after it filed suit, and since it does not appear that the defendant cannot present, by way of affidavit, "facts essential to justify [its] opposition" under Fed. R. Civ. P. 56(f), the court will not grant the defendant's implicit request to defer ruling on the plaintiff's motion until further discovery is complete.

specifications by reference. *See Buck Run Baptist Church, Inc. v. Cumberland Sur. Ins. Co.*, 983 S.W.2d 501, 503 (Ky. 1998); *Family Safety Products, Inc. v. Vista 2000, Inc.*, 226 F.3d 501, 504 (6th Cir. 2000). The contract also affirmed that the defendant had carefully read the prime contract, its plans and specifications, and had examined the site of the work and fully understood the scope and intention of this contract and, moreover, that it would not "make any claim or demand...based upon or arising out of any alleged misunderstanding or misconception on its part of the requirements, covenants, stipulations, and restrictions herein." The contract clearly identified all of the relevant specification sections, including section 16960. Specification section 16960 unambiguously indicated that the work for the "Computer Network System" included "active equipment" or "active components."[2] Although the defendant did not affirmatively bid on the computer network system or its active components, by signing the contract it did clearly obligate itself to do this work.[3] *See George Pridemore & Son, Inc. v. Traylor Bros., Inc.*, 311 S.W.2d 396 (Ky.

---

[2] The defendant does not claim that specification section 16960 was ambiguous because it referred to "active equipment" rather than "active components" in the description of the project.

[3] Since the contract signed by the defendant unambiguously committed it to provide the active components, it is unnecessary to address whether its bids on the project, which did not include a quotation for the active components, constituted an offer. However, the court notes that "[t]ypically, a price quotation is considered an invitation for an offer, rather than an offer to form a binding contract." *Dyno Construction Co. v. McWane*, Inc, 198 F.3d 567, 572 (6th Cir. 1999)(citations omitted)(applying Kentucky law). The defendant has made no showing that, contrary to this general rule, its price quotations were sufficiently detailed that it would "reasonably appear...that assent to th[e] quotation[s] is all that is needed to ripen the offer into a contract." *Id.* (citations omitted). Even though the quotations did include descriptions, as well as price and quantity terms, for each of the products, they did not include the time in which the plaintiff had to

1956). Since an unambiguous contract cannot be varied simply because one party intended a different result, *Green v. McGrath*, 662 F. Supp. 337, 341 (E.D. Ky. 1986)(citations omitted)(applying Kentucky law), and since Kentucky's parol evidence rule prohibits the defendant from introducing prior negotiations or statements – such as Kevin Smith's statement that the defendant should not bid on the active components – that change or contradict the clear and definite terms of the contract, *National Equipment Co. v. Heib*, 266 S.W.2d 349, 351 (Ky. 1954), the contract here must be enforced as written.[4] The contract clearly provides that the defendant obligated itself to provide the active components for the project's computer network system for $29,145.00. If, as it alleges, the defendant never intended to agree to provide the active components, it should not have signed a contract that unambiguously committed it to do so. The plaintiff is entitled to judgment as a matter of law that the contract obligated the defendant to furnish the active components referred to in specification section 16960 and that the defendant breached the contract when it refused to provide that equipment at the

---

accept the "offer" or when or where the defendant would supply the materials listed therein. Thus, even if the parties did not clearly memorialize their agreement in a written contract, the defendant's quotations were not offers. *See id.* Accordingly, it is unnecessary to address whether the plaintiff's purchase order, which incorporated the drawings and specification of the prime contract (including the active components), constituted an acceptance with materially varying terms under Ky. Rev. Stat. § 355. 2-207 that would not become part of a contract under a "battle of the forms" scenario.

[4] The defendant does not contend that the otherwise plain terms of the contract were a product of fraud or mutual mistake so as to trigger an exception to the parol evidence rule. *See Jones v. White Sulphur Springs Farm*, 605 S.W.2d 38. 42 (Ky. App. 1980).

agreed contract price.

To the extent the plaintiff seeks summary judgment on the issue of damages, however, its motion will be denied. While the contract authorized the plaintiff to declare the defendant in default and to hire another party to "cover" for the defendant's refusal to provide the active components, the plaintiff nevertheless is entitled to recover only those expenses that were reasonably and necessarily incurred in completing the contract. *See Barley's Adm'x v. Clover Splint Coal Co.*, 150 S.W.2d 670, 671 (Ky. 1941); *Cf. Consolidated Aluminum Corp. v. Krieger*, 710 S.W.2d 869, 872 (Ky. App. 1986). The defendant claims that additional discovery in this case will demonstrate that the plaintiff's efforts to cover were not reasonable because, among other things, Matrix ultimately installed equipment that is different from the equipment it bid on and bid on a different telephone system than the defendant agreed to provide. In light of the minimal discovery that has taken place in this case thus far, these claims of improper cover preclude summary judgment on the issue of damages.[5] *See* Fed. R. Civ. P. 56(f).

Additionally, the defendant's counterclaim, under a theory of unjust enrichment, for the 24,000 feet of cable it provided the plaintiff is not precluded by the rule stated in *West Ky. Coal Co. v. Nourse*, 320 S.W.2d 311, 314 (Ky. 1959) that

---

[5] The measure of the plaintiff's damages would be the difference between what it paid Matrix and Graybar to complete the work that the defendant agreed to do minus the amount the defendant agreed to do the work for minus any amount attributable to the plaintiff's failure to mitigate its damages reasonably. *See Perkins Motor, Inc. v. Autotruck Federal Credit Union*, 607 S.W.2d 429, 430 (Ky. App. 1980). Thus, the plaintiff would not, as a matter of law, be entitled to $113,249.00 (the combined cost of the work done by Matrix and Graybar) in damages.

a party who breaches is not entitled to recover on the contract. Indeed, a person may recover under a theory of unjust enrichment even in the absence of a contract. S*ee Fayette Tobacco Warehouse Co. v. Lexington Tobacco Bd. of Trade*, 299 S.W.2d 640, 643-644 (Ky. 1956).[6] Accordingly,

IT IS ORDERED that the plaintiff's motion for summary judgment (No. 10) is **GRANTED IN PART AND DENIED IN PART**. The motion is **GRANTED** insofar as it seeks summary judgment on its claim that the contract between it and the defendant obligated the defendant to provide the active components listed in specification section 16960. The motion is **DENIED** insofar as it seeks summary judgment on the issue of damages and on the defendant's counterclaims.

This the _____ day of _____, 2001.

_____
JENNIFER B. COFFMAN, JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

[6] The plaintiff also argues that *quantum meruit* recovery is precluded because the contract says that upon default the defendant "shall be entitled to no further compensation whatsoever in the event this contract is terminated." Again, however, since *quantum meruit* is a remedy that exist independent of contractual rights, this language does not preclude the defendant's counterclaim.