



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: September 8, 2023

CBCA 7645

INQEM LLC,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Michael Crenshaw, Chief Executive Officer of INQEM LLC, Miami, FL, appearing for Appellant.

Melanie T. Dasher, Office of Assistant Chief Counsel, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, counsel for Respondent.

Before Board Judges **LESTER**, **RUSSELL**, and **O'ROURKE**.

LESTER, Board Judge.

Appellant, INQEM LLC (INQEM), challenges a decision by a contracting officer for the Department of Homeland Security, Customs and Border Protection (CBP), terminating for cause its contract for the purchase and delivery of bottled water to various locations in Arizona. In its notice of appeal, INQEM asserted that its delays in performing its contract were the result of supply chain issues caused by Hurricane Ian, which hit southwest Florida two days before INQEM was awarded its purchase order. INQEM alleges that these supply chain issues made it impossible for it to deliver to Arizona on schedule.

CBP has filed a motion for summary judgment and a thirty-paragraph statement of undisputed material facts. Although the Board has provided INQEM several opportunities

to respond, INQEM, without explanation, has failed to do so. In light of warnings that we provided during our efforts to obtain a response from INQEM, we now deem CBP's statement of undisputed material facts as admitted. Based upon those uncontested facts, we grant CBP's motion for summary judgment.

Statement of Undisputed Material Facts

1. Michael Crenshaw is the Chief Executive Officer (CEO) of INQEM.
2. On September 28, 2022, Hurricane Ian made landfall in southwest Florida.¹
3. According to INQEM, Hurricane Ian "caused a lot of complications for [INQEM's] primary distributor, as no one was aware of the magnitude of the storm" (quoting from page 1 of INQEM's answer to CBP's complaint).
4. On September 30, 2022, CBP awarded INQEM purchase order no. 70B03C22P00000607 (the contract) for delivery of bottled water in support of CBP's Border Patrol Tucson Sector for the term beginning September 30, 2022, through February 28, 2023.
5. On September 30, 2022, Mr. Crenshaw accepted the contract in writing.
6. The contract was structured as a fixed-unit-price purchase order that identified CBP delivery locations; provided estimated monthly bottled water requirements for the length of the five-month ordering period; and established pricing for 16.9-ounce, one-gallon, and five-gallon bottled water units.

¹ On May 31, 2023, CBP requested that the Board take judicial notice that Hurricane Ian hit southwest Florida on September 28, 2022. We need not address CBP's request because the fact has been admitted through INQEM's failure to respond to CBP's statement of undisputed material facts. *See Stand Strong USA, Inc. v. Harwich Enterprises, LLC*, 570 F. Supp. 3d 1207, 1219 (S.D. Fla. 2021). We note, though, that CBP's identification of September 28, 2022, as the date that Hurricane Ian hit southwest Florida is supported by information published on the National Weather Service's website, *see* <https://www.weather.gov/mhx/HurricaneIan093022> (last visited Sept. 8, 2023), which would be adequate for purposes of judicial notice. *See, e.g., Auto-Owners Insurance Co. v. G&D Construction Group, Inc.*, No. 1:21-CV-0739-SEG, 2023 WL 3641947, at *6 n.6 (N.D. Ga. Mar. 10, 2023); *Davis v. Toyota Motors Sales*, No. 14-683, 2015 WL 3456656, at *3 (M.D. La. May 29, 2015).

7. The contract contained Federal Acquisition Regulation (FAR) clause 52.212-4, “Contract Terms and Conditions—Commercial Products and Commercial Services (Nov 2021)” (48 CFR 52.212-4 (2022)), which provided in paragraph (m) as follows:

Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

8. Paragraph (f) of FAR clause 52.212-4 provided as follows:

Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

9. Section 5.6 of the contract’s “Statement of Work” provided that the “Contractor shall deliver non-emergency orders of requested quantities within fourteen (14) days of the order date.”

10. During October 2022, INQEM was still trying to find a primary distributor but was unable to do so.

11. During October 2022, INQEM “had to fly from Florida to [Arizona] to make the deliveries [itself] to fulfill [its] end of the contract” (quoting from page 1 of INQEM’s answer to CBP’s complaint).

12. On or about October 24, 2022, in an email to the CBP contracting officer's representative (COR) and CBP's lead mission support specialist (MSS), Mr. Crenshaw identified a specific email address to be used for submitting orders under the contract.

13. On or about November 15, 2022, Mr. Crenshaw left a voicemail message for the CBP contracting officer in which Mr. Crenshaw indicated that "it would be smart to pause deliveries to get on the same page in regards to how things need to be done to make everyone's job easier."

14. On November 30, 2022, the CBP COR submitted the following seven orders to INQEM via email, using the email address that Mr. Crenshaw had provided, with Mr. Crenshaw and the CBP MSS as carbon copy recipients:

Order A	Ajo Station	\$4608 (23,040 16.9-ounce bottles) ITEM #0002
Order B	Casa Grande Station	\$384 (1920 16.9-ounce bottles) ITEM #0002
Order C	Douglas Station	\$1152 (5760 16.9-ounce bottles) ITEM #0002
Order D	Nogales I-19 Checkpoint	\$2100 (70 five-gallon bottles) ITEM #0004
Order E	Three Points Station	\$576 (2880 16.9-ounce bottles) ITEM #0002, and \$450 (15 five-gallon bottles) ITEM #0004
Order F	Tucson Coordination Center	\$288 (1440 16.9-ounce bottles) ITEM #0001
Order G	Willcox Station	\$288 (1440 16.9-ounce bottles) ITEM #0001

15. On December 2, 2022, the CBP COR submitted the following two additional orders to INQEM via email, using the email address that Mr. Crenshaw had provided, with Mr. Crenshaw and the CBP MSS as carbon copy recipients:

Order H	Naco Station	\$1536 (7680 16.9-ounce bottles) ITEM #0002
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Order I	Nogales I-19 Checkpoint	\$1500 (50 five-gallon bottles) ITEM #0004
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16. On or about December 3, 2022, in an email to the CBP COR, Mr. Crenshaw stated that the orders submitted to INQEM on November 30, 2022, “are currently being scheduled for delivery” and that Mr. Crenshaw “will update [the COR] the latest by Wednesday, December 7, 2022.”

17. On or about December 9, 2022, in an email to the CBP MSS, to which the CBP contracting officer and the CBP COR were carbon copy recipients, Mr. Crenshaw stated that, “Those orders [i.e., the November 30, 2022, orders] are scheduled for next week.”

18. By December 15, 2022 (the fifteenth day after November 30, 2022), Orders A, B, C, D, E, F, and G had not been delivered to the various specified CBP locations.

19. On December 16, 2022, Mr. Crenshaw left a voicemail message for the CBP contracting officer informing him that INQEM had identified a local, reliable company, Culligan Waters, to take over INQEM’s remaining duties under the contract, as INQEM had less than sixty days to complete it.

20. By December 17, 2022 (the fifteenth day after December 2, 2022), Orders H and I had not been delivered to CBP.

21. On December 19, 2022, the CBP contracting officer sent Mr. Crenshaw an email in which the contracting officer informed Mr. Crenshaw that INQEM’s contract would not be transferred to another company in the manner that Mr. Crenshaw had proposed in his voicemail, indicating that, consistent with FAR 42.1204, “contracts cannot be transferred to a third party in that manner unless [the original prime contractor’s] assets were being transferred to that company.” The CBP contracting officer further advised Mr. Crenshaw that INQEM was “responsible for fulfilling the terms of the contract” and that his company was “in default by virtue of not delivering the two most recent orders on time.” Among other things, the CBP contracting officer stated that he was “at a point where [he] will be forced to take appropriate action if [he does not] receive adequate assurances that [INQEM] will perform in accordance with the contract going forward.”

22. By December 21, 2022, having not received a response to his December 19, 2022, email, the CBP contracting officer sent Mr. Crenshaw a follow-up email in which he reiterated that INQEM was in default, noting that the contract “may be terminated for cause at any time” and requiring Mr. Crenshaw to provide a substantive response by the end of that week, December 23, 2022, to avoid termination. This email contained the following

statement: “Please note that any acceptance by the Government of delinquent goods does not condone any delinquency or waive any rights the Government has under the contract.”

23. On or about December 23, 2022, in an email to the CBP contracting officer, Mr. Crenshaw explained INQEM’s late deliveries and how INQEM planned to prevent a recurrence of these problems. He stated that “our carrier has been having a hard time due [to] [H]urricane [I]an (being we’re based in [Florida]). We will be working with a local carrier moving forward to eliminate, issues with on time deliveries.”

24. On or about December 27, 2022, the CBP MSS notified Mr. Crenshaw that Order D for Nogales I-19 Checkpoint was cancelled, indicating that the CBP had purchased bottled water from another vendor outside of the contract to meet that need.

25. On or about January 6, 2023, INQEM caused a portion of Order E (fifteen five-gallon bottles, but not the 2880 16.9-ounce bottles) to be delivered to Three Points Station.

26. On or about January 11, 2023, INQEM caused Order I (fifty five-gallon bottles) to be delivered to Nogales I-19 Checkpoint.

27. In an email dated January 14, 2023, Mr. Crenshaw represented that outstanding orders for INQEM Item #0001 “will start to be delivered by Wednesday (01/18/2022 [sic]) at the latest.” Mr. Crenshaw further stated that “[t]he remaining orders (4) will follow those, which consist of item 0002 (40 per case, 48 per pallet). After those are delivered we will be all caught up on all orders. Again we are sorry for the delay”

28. By January 24, 2023, ten days later, the remaining orders containing INQEM ITEM #0001 and ITEM #0002 bottled waters had still not been delivered to CBP.

29. On January 24, 2023, the CBP contracting officer sent a notice of termination for cause to Mr. Crenshaw, informing him that the contract was completely terminated for cause, effective January 24, 2023, pursuant to FAR clause 52.212-4(m), due to INQEM’s failure to timely deliver the various orders of bottled water within fourteen days of each order as required under the contract. The notice included the following statement: “In addition, despite my efforts, as documented in written communications, to obtain assurances that you will perform, you have failed to provide adequate assurances as to future performance for the remainder of the contract term.”

30. On January 25, 2023, the CBP contracting officer issued modification P00003 terminating the contract for cause, effective January 24, 2023.

Proceedings Before the Board

On January 24, 2023, INQEM filed its notice of appeal challenging the contracting officer's termination decision. In its notice, INQEM represented that, even though the contract required performance in Arizona, INQEM was headquartered in Miami, Florida. It asserted that, because of its location, Hurricane Ian "caused us to fall behind tremendously, which was ultimately out of our control." It alleged that "[o]ur original supplier was local to us" and that "[o]nce Hurricane Ian happened, our entire plan was ruined." It further alleged that, when it asked the CBP contracting officer on December 16, 2022, to novate the contract to substitute a different contractor to assume INQEM's responsibilities, the CBP contracting officer responded that "contracts cannot be transferred to a third party in that manner unless [INQEM's] legal assets were being transferred to that company" and was, in general, unhelpful in discussing issues that INQEM was having.

Because of the nature of the claim at issue (that is, the Government's termination of the contract for cause), the Board directed CBP to file the complaint, which CBP did on February 23, 2023. In its answer, filed March 24, 2023, INQEM asserted that, "with the origination of [H]urricane Ian and the significant damage it did and our location, this termination should be judged differently."

CBP filed its motion for summary judgment on May 31, 2023, along with its statement of undisputed material facts. Pursuant to Board Rule 8(g) (48 CFR 6101.8(g)), INQEM had thirty days, or until June 30, 2023, to respond to the motion or to seek an enlargement of time for submitting its response.

After the due date passed without response by INQEM, the Board issued an order that was emailed to the parties on July 7, 2023, granting INQEM until July 24, 2023, to submit a response or seek an enlargement of time. On July 11, 2023, because the Board had not received any "read receipts" after sending its email, one of the Board's paralegal specialists spoke with INQEM's representative, Mr. Crenshaw, to ensure that he was aware of the Government's summary judgment motion and of the order that the Board had issued regarding INQEM's need to respond. Although Mr. Crenshaw told the paralegal specialist that he would look for the Board's email, INQEM neither responded to the summary judgment motion nor contacted the Board to complain that it had not received the motion or the Board's order.

On August 4, 2023, the Board issued an order by email providing INQEM with yet another opportunity—until August 21, 2023—to respond to the motion or "to request an extension of time to respond (supported by reasons establishing good cause for an extension)." The Board indicated that "[i]f INQEM does not respond to the motion or seek an extension of time by that deadline, the Board will deem all of the factual assertions set

forth in the Government’s statement of undisputed material facts as true and will rule on the Government’s motion for summary judgment accordingly.” To ensure INQEM’s receipt of the Board’s orders, the Board sent paper copies of the July 7 and August 4, 2023, orders to Mr. Crenshaw along with a cover letter, a copy of which was also emailed to the parties on August 10, 2023. The Board has a tracking receipt from the United Parcel Service (UPS) showing that, on August 11, 2023, INQEM’s signatory received the UPS package containing the July 7 and August 4 orders and the cover letter.

The Board did not receive any response from INQEM by August 21, 2023. Nevertheless, during the evening of August 22, 2023, Mr. Crenshaw sent an email to the presiding judge’s chambers email account (as a “reply all” to the email that the Board had sent on August 10, 2023) in which he said, “Greetings, I sent an email yesterday requesting more time but didn’t receive a response.” The Board sent a responsive email the next day, asking Mr. Crenshaw to forward a copy of his August 21 email, but the Board’s request went unanswered. Despite the absence of any response, the Board issued another order by email on August 24, 2023, providing a final extension of INQEM’s response deadline to August 31, 2023, indicating that no further enlargements would be granted and reiterating that, if INQEM did not respond by the new deadline, “the Board will deem the Government’s statement of undisputed material facts as admitted and will rule on the summary judgment motion as appropriate.” The August 31 deadline has passed, and INQEM has not responded to CBP’s motion for summary judgment or its statement of undisputed material facts.

Discussion

I. INQEM’s Failure to Respond to CBP’s Summary Judgment Motion

“The fact that there has been no response to a summary judgment motion does not . . . mean that the motion is to be granted automatically.” *Champion v. Artuz*, 76 F.3d 483, 486 (2d Cir. 1996); see *Hibernia National Bank v. Administracion Central Sociedad Anonima*, 776 F.2d 1277, 1279 (5th Cir. 1985) (“A motion for summary judgment cannot be granted simply because there is no opposition . . .”). “Even in cases in which a party does not oppose a motion or proposed findings of fact, the moving party [still] must demonstrate that the uncontroverted facts entitle it to a judgment as a matter of law.” *American Comtel Corp. v. United States*, No. 91-1075C, 1994 WL 16866092, at *1 (Fed. Cl. Aug. 17, 1994) (citing *Custer v. Pan American Life Insurance Co.*, 12 F.3d 410, 416 (4th Cir. 1993)). That being said, a party’s failure to respond to a summary judgment motion justifies declaring as uncontroverted the factual assertions in the moving party’s statement of undisputed material facts, particularly when the party that failed to respond was previously warned of the consequences of not responding. See, e.g., *Stafford v. Stout*, No. 1:20-CV-731, 2023 WL 3006102, at *1 (M.D.N.C. Apr. 19, 2023); *Podrebarac v. McDonough*, No. 21-CV-2552, 2023 WL 2915405, at *4 n.7 (N.D. Ill. Apr. 12, 2023); *Lingford v. Klemp*, No. 4:20-CV-

1623-ACL, 2023 WL 1990913, at *2 (E.D. Mo. Feb. 14, 2023); *Summit Contractors, Inc. v. United States*, 23 Cl. Ct. 333, 335 (1991). Ultimately, “[w]hat the non-movant’s failure to respond to the motion does is lighten the movant’s burden.” *Spero v. Vestal Central School District*, 427 F. Supp. 3d 294, 304 (N.D.N.Y. 2019).

In light of INQEM’s failure to respond despite the Board’s warnings, we deem CBP’s statement of undisputed material facts as uncontested. We will grant CBP’s summary judgment motion “if the facts as to which there is no genuine dispute ‘show that the moving party is entitled to a judgment as a matter of law.’” *Champion*, 76 F.3d at 486 (quoting Fed. R. Civ. P. 56(c)).

II. The Validity of CBP’s Termination for Cause

A. INQEM’s Default

Paragraph (m) of FAR 52.212-4, the commercial items clause in INQEM’s contract, provides that “[t]he Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions” 48 CFR 52.212-4(m). We previously described the allocation of the burdens of proof in a contractor challenge to a termination for cause:

If a contractor challenges such a termination before the Board, “the government initially has the burden of proving that the termination for cause was valid.” *Brent Packer v. Social Security Administration*, CBCA 5038, et al., 16-1 BCA ¶ 36,260 (quoting *KSC-TRI Systems, USA, Inc.*, ASBCA 54638, 06-1 BCA ¶ 33,145 (2005)). “Once the agency has satisfied its threshold burden to support a termination for [cause], the burden shifts to the contractor to establish that its failure to comply with the terms and conditions of the contract[] was excusable.” *Carmazzi Global Solutions, Inc. v. Social Security Administration*, CBCA 6264, et al., 19-1 BCA ¶ 37,340; see *ACM Construction & Marine Group, Inc. v. Department of Transportation*, CBCA 2245, et al., 14-1 BCA ¶ 35,537 (“If the Government presents a prima facie case that the termination was proper, the burden shifts to the contractor to rebut the prima facie case.”). To the extent that the contractor claims that excusable delays impacted its performance and entitled it to extra time to perform, the contractor bears the burden of proving excusability. *I-A Construction & Fire v. Department of Agriculture*, CBCA 2693, 15-1 BCA ¶ 35,913.

ORSA Technologies, LLC v. Department of Veterans Affairs, CBCA 7141, 22-1 BCA ¶ 38,025, at 184,657-58.

CBP has satisfied its burden of establishing INQEM's default. Under the contract, INQEM was required to deliver non-emergency orders of requested quantities within fourteen days of an order. Statement of Undisputed Material Facts (SUMF) ¶ 9. It is undisputed that INQEM did not timely deliver CBP's orders of November 30 and December 2, 2022. *Id.* ¶¶ 18, 20. Although INQEM eventually provided late delivery of a portion of the ordered quantities, it never delivered other ordered items. *Id.* ¶ 28. "A contractor's failure to make timely delivery of agreed-upon goods establishes a prima facie case of default." *General Injectables & Vaccines, Inc. v. Gates*, 519 F.3d 1360, 1363 (Fed. Cir. 2008); *see ORSA Technologies*, 22-1 BCA at 184,658.

B. INQEM's Defense to Default

Because CBP has met its threshold burden, the burden shifts to INQEM to show that it was excused from meeting its contractual deadlines. *See General Injectables*, 519 F.3d at 1363; *ORSA Technologies*, 22-1 BCA at 184,658. "An excusable failure of timely delivery occurs when the failure is 'caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence.'" *General Injectables*, 519 F.3d at 1363 (quoting FAR 52.212-4(f)); *see ECC, International*, ASBCA 55781, 13 BCA ¶ 35,207, at 172,744 ("An excusable delay is one due to causes that are unforeseeable, beyond the contractor's control, and not resulting from its fault or negligence."). To obtain summary judgment on an issue upon which its opponent bears the burden of proof, the moving party must demonstrate "that there is an absence of evidence to support the non-moving party's case." *Gardner Zemke Co. v. Department of the Interior*, CBCA 1308, 09-1 BCA ¶ 34,081, at 168,501. That is, where "appellant ultimately bears the burden of proving its allegations against the Government, the Government is entitled to summary relief if we conclude that appellant cannot establish one or more crucial aspects of each of its theories." *Id.*

In its notice of appeal and its answer, INQEM cited Hurricane Ian, which impacted INQEM's home state of Florida, as its excuse for failing to make timely deliveries of bottled water at the required locations in Arizona. It has placed no evidence in the record, however, to support its assertion. As late as December 2 and 9, 2022, INQEM was telling CBP that it was preparing for timely, complete deliveries in each of the following weeks. SUMF ¶¶ 16, 17. The first time that INQEM ever mentioned Hurricane Ian as a basis for INQEM's Arizona-delivery delays was on December 23, 2022, a week after it had defaulted on its delivery obligations. *Id.* ¶ 23. The first reference to Hurricane Ian, therefore, came only after INQEM had failed to deliver and the CBP contracting officer had indicated that he was considering termination for cause.

Even INQEM's December 23 reference to Hurricane Ian did not explain how INQEM was impacted to such an extent that it ultimately was unable to perform. INQEM stated that "our carrier has been having a hard time due [to] [H]urricane [I]an (being we're based in

[Florida]). We will be working with a local carrier moving forward to eliminate, issues with on time deliveries.” SUMF ¶ 23. On January 14, 2023, INQEM reported that it would deliver all outstanding orders for ITEM #0001 by January 18, 2023, “at the latest,” *id.* ¶ 27, presumably using the “local carrier” in Arizona that it had previously referenced, with completion of ITEM #0002 deliveries to follow. *Id.* By January 24, 2023, however, no deliveries had been received. *Id.* ¶ 28. The contracting officer then terminated the contract for cause.

Although a hurricane can provide a basis for an excusable delay, *see* FAR 52.212-4(f), “[n]ot every fire or quarantine or strike or freight embargo should be an excuse for delay under the proviso.” *Asheville Jet Charter & Management, Inc. v. Department of the Interior*, CBCA 4079, 16-1 BCA ¶ 36,373, at 177,302 (quoting *United States v. Brooks-Callaway Co.*, 318 U.S. 120, 123 (1943)). A contractor must show, through evidence, how an occurrence or event that, in the right circumstances, could support an excusable delay actually affected the contractor and caused its inability timely to perform. *Adventus Technologies, Inc. v. Department of Agriculture*, CBCA 7283, 23-1 BCA ¶ 38,392, at 186,544; *see United Facility Services Corp. v. General Services Administration*, CBCA 5272, 22-1 BCA ¶ 38,090, at 184,977 (“Merely citing the word ‘COVID’ [or referencing a severe weather event], without more, does not provide a basis for excusing a failure.”). Here, even giving INQEM the benefit of the doubt that Hurricane Ian affected the ability of its Florida distributor to deliver and distribute bottled water in Arizona, INQEM was given additional time to make the required deliveries after it told the CBP contracting officer of its Florida distributor’s problems and asserted that it would switch to a local Arizona carrier. INQEM then did not deliver by the date that it had promised. INQEM has never provided any explanation of how Hurricane Ian could have affected water bottle suppliers in Arizona to such an extent that it excused INQEM’s non-performance.

It also appears from statements in its notice of appeal that INQEM is arguing that the contracting officer’s refusal to approve INQEM’s December 16, 2022, request for novation of its contract to an unrelated third party was improper and should excuse its failure to perform. INQEM has no valid basis for complaint. “41 U.S.C. 6305 prohibits transfer of Government contracts from the contractor to a third party” except in circumstances in which the third party is the successor in interest to the prime contractor. FAR 42.1204(a). The third party to which INQEM wanted the Government to assign its contract was not a successor in interest to INQEM. The contracting officer’s alleged failure to allow a contract novation to a company wholly unrelated to the prime contractor does not excuse INQEM’s subsequent failure to perform:

The Government is not obligated to novate a contract. When the Government concludes it is not in its interest to novate the contract, it may decline to do so and hold the original contractor liable for performance. FAR 42.1204(c). If

the original contractor does not perform, the Government may terminate the contract for default.

ETouch Federal Systems, LLC, SBA No. SIZ-5271, 2011 WL 5075213, at *11 (Aug. 25, 2011); *see Siracusa Moving & Storage*, ASBCA 51433, 99-2 BCA ¶ 30,447, at 150,441 (finding that the contracting officer did not and was not required to agree to a novation); FAR 42.1204(c) (“When it is in the Government’s interest not to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.”).

For the foregoing reasons, we find that CBP has established, through uncontested facts, that INQEM defaulted on its contract. We further find that INQEM cannot rely on Hurricane Ian (particularly after the CBP contracting officer provided it additional time to complete the required deliveries) or its rejected novation request to excuse its ultimate failure to perform.

Decision

CBP’s motion for summary judgment is granted. INQEM’s appeal challenging the termination of its contract for cause is **DENIED**.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.
Board Judge

We concur:

Beverly M. Russell

BEVERLY M. RUSSELL
Board Judge

Kathleen J. O’Rourke

KATHLEEN J. O’ROURKE
Board Judge