UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR SUMMARY JUDGMENT DENIED: September 26, 2019

CBCA 6264, 6265, 6273, 6274, 6275, 6276,
6277, 6278, 6279, 6280, 6281, 6282, 6283, 6284, 6288, 6342, 6343, 6344

CARMAZZI GLOBAL SOLUTIONS, INC.,

Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

Richard F. Busch II of Busch Law Firm, L.L.C., Littleton, CO; and Katherine B. Burrows of Nelson, Mullins, Riley & Scarborough, LLP, Baltimore, MD, counsel for Appellant.

Dorothy M. Guy, Tal Kedem, Alice M. Somers, and Brandon Dell'Aglio, Office of the General Counsel, Social Security Administration, Baltimore, MD, counsel for Respondent.

Before Board Judges **SOMERS** (Chair), **VERGILIO**, and **BEARDSLEY**.

**VERGILIO,** Board Judge.

The contractor, Carmazzi Global Solutions, Inc., has submitted a motion for summary judgment in eighteen appeals. Proceedings in fifteen of the cases (CBCA 6265, 6273, 6274, 6275, 6276, 6277, 6278, 6280, 6281, 6282, 6283, 6288, 6342, 6343, 6344) are suspended, pending the resolution of the remaining three. The contractor has not asked to lift the suspension in those cases. The Board denies the motion for summary judgment in the suspended cases as inappropriately filed.

In the three active cases, CBCA 6264, 6279, 6284, a response to the motion by the agency, the Social Security Administration, is unnecessary. In these cases, the contractor challenges the termination for default of each of the substantively similar contracts. The contractor posits in its motion that, because the agency first terminated for convenience another of its substantively identical contracts, under the doctrine of finality the contractor must prevail in having these later terminations converted to ones for convenience. The conclusion reached by the contractor is not supported legally; the termination for convenience of one contract does not compel the agency to so terminate other contracts with the same contractor or preclude the agency from justifying a termination for default.

## Discussion

The standards for resolving a motion for summary judgment are well established. When there is no genuine issue as to any material fact, the movant must demonstrate that it is entitled to prevail as a matter law. *Walker Development & Trading Group Inc. v. Department of Veterans Affairs*, CBCA 5907, 19-1 BCA ¶ 37,376, at 181,709.

The contractor has failed to demonstrate legal entitlement to relief, because the termination for convenience it relies upon creates no finality for the matters at issue. The contractor maintains that the agency terminated for convenience one of its contracts, and subsequently terminated for default the contracts at issue in these three appeals. The finality of the termination for convenience of a contract not here at issue is not challenged or in dispute. However, the contractor provides no substantive basis that would make that determination final in any of these cases, under which the Board reviews de novo the challenged decisions of the contracting officer. "If made [by the contracting officer], specific findings of fact are not binding in any subsequent proceeding" and "[t]he contracting officer's decision on a claim is final and conclusive and is not subject to review by any forum, tribunal, or Federal Government agency, unless an appeal or action is timely commenced as authorized by this chapter." 41 U.S.C. § 7103(e), (g) (2018).

The contractor is misguided in its notion that a determination to terminate for convenience one contract precludes a contracting officer (the same or a different one) from acting differently under a separate, but substantively identical, contract. The decisions to terminate or not, and if to terminate, for convenience or default, are discretionary. If a contractor fails to satisfy terms and conditions of a contract, a contracting officer is not compelled to issue a termination for convenience or for default; either termination may be an available option. A contracting officer must exercise discretion for each contract. The Board reviews that determination, if appealed, on a de novo basis. It is anticipated that the decisions in each of the representative appeals will be instructive to the resolution of the

other appeals; however, the contractor incorrectly posits that the resolution of these three appeals automatically dictates the results in the remaining cases. Whether or not substantive factual distinctions exist has not been determined.

The contractor has failed to support the basic premise of its motion, which is that finality of a contracting officer's decision in one contract equates to finality in another contract. The cases it references, *e.g.*, *URS Consultants, Inc.*, IBCA 42285-2000, 02-1 BCA ¶ 31,812, and the cited material in a treatise, do not purport to extend finality beyond a given contract.

It is not material that the contracts and circumstances are essentially the same, as posited in the contractor's motion, which also recognizes that a contracting officer is to exercise discretion in a fair and reasonable manner when terminating a contract for default. That contracts may be the same, and circumstances the same or similar, does not preclude a contracting officer from reasonably reaching different results. For example, a decision to terminate for default one of these contracts does not mean that all of the contracts must be terminated for default.

## Decision

The Board **DENIES** the contractor's motion for summary judgment.

*Joseph A. Vergilio*
JOSEPH A. VERGILIO
Board Judge

We concur:

*Jeri Kaylene Somers*
JERI KAYLENE SOMERS
Board Judge

*Erica S. Beardsley*
ERICA S. BEARDSLEY
Board Judge