UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 11, 2021

CBCA 6958

DANIEL J. ETZIN,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Daniel J. Etzin, pro se, London, United Kingdom.

Anthony M. Giannopoulos, Office of Regional Counsel, General Services Administration, Philadelphia, PA, counsel for Respondent.

Before Board Judges **ZISCHKAU**, **SULLIVAN**, and **LESTER**.

LESTER, Board Judge.

Appellant, Daniel J. Etzin, purchased two vessels at a General Services Administration (GSA) auction in October 2019, but failed to remove them from the Federal Government site on which they were stored within the ten-day deadline that the purchase agreements required. Months later, Mr. Etzin requested a refund of his payments, asserting that the COVID-19 pandemic had now made removal impossible. GSA eventually refunded the bulk of Mr. Etzin's payments, but, as part of a default termination of the contracts, withheld 5% as a default fee. In response to Mr. Etzin's notice of appeal challenging GSA's withholding, GSA filed a motion to dismiss this appeal. Because Mr. Etzin was in default of the vessel removal obligations of his contracts, and because Mr. Etzin's contracts authorize the 5% default fee, we deny Mr. Etzin's appeal.

Background

The Solicitation Provisions

On October 1, 2019, GSA conducted an auction, via the Internet through the "GSA Auctions" website, for the sale of Lot 31QSCI20004037 (a seventy-four-foot steel workboat, with a estimated weight of approximately 120,000 pounds) and Lot 31QSCI20004038 (an eighty-two-foot non-standard aluminum-hulled workboat with an M9161A tractor, with an eighteen-foot beam), both of which were identified as having been sitting outdoors on dry ground without maintenance at the Naval Support Fleet Logistics Center (NSFLC or Naval Yard) in Williamsburg, Virginia, for a period of between six and eight years. The online solicitation for each of the two lots provided descriptions and photographs of the vessel for sale, indicated that the bidder should inspect the vessel before bidding and that its condition was not warranted, and directed bidders to "[r]ead terms and conditions" before bidding. Appeal File, Exhibit 2 at AF004, AF008.[1] The "terms and conditions" mentioned in the solicitation referred to the "GSA Online Sales Terms and Conditions" (GSA Auction T&Cs) that were available on the GSA Auctions website. They notified successful bidders "that an award constitutes a binding contract with the United States Government." *Id*. at AF024.

Each online solicitation also indicated that "Buyer must pack, load, and remove. Inspection/removal by appointment only," Exhibit 2 at AF004, AF008, before explaining steps that the successful bidder would have to take and the responsibilities that the successful bidder would have to assume as part of the removal process:

> Please contact the custodian for inspection dates and times and for removal arrangements.
>
> PROPERTY REMOVAL: Due to security issues at property locations, successful bidders are required to contact the custodian prior to entering the facility to remove property, and at times, they are not permitted to use security phones. Therefore, successful bidders must communicate with the custodians in advance to make arrangements for removal and/or have a cell phone with them to contact them once they arrive at the secured location.
>
> Successful bidders are cautioned that they will be responsible for loading, packing and removal of any and all property awarded to them from the exact place where the property is located [at the NSFLC, Williamsburg, Virginia].

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[1] All exhibits referenced in this decision are found in the appeal file, unless otherwise noted.

Id. at AF005, AF009.

The GSA Auction T&Cs referenced in the solicitations provided, under the heading "Removal," that the successful bidder would have ten business days after being notified of award to remove the purchased property from the government site at which it was then located:

> Property must be removed *within ten (10) business days* from the date and time of award e-mail notification. Successful bidders should contact the custodian prior to removal for specific building and loading policies.

Exhibit 3 at AF028. In those T&Cs, GSA represented, in a clause titled "Default," that, if the successful bidder failed to remove the purchased items within ten business days after award notification, it would be considered in default of its contract obligations:

> *If you are awarded an item on GSA Auctions, you have a responsibility to* pay for the item or lot you were awarded within 2 business days from the date and time the award e-mail notification was sent and *promptly remove it within 10 business days from the date and time the award e-mail notification was sent, unless otherwise specified in the contract. If you fail to meet either of these two conditions, you will be in violation of the online sales terms and conditions of your contract with the Government and will be considered "in default."*

Id. at AF025 (emphasis added). The clause further provided that "[f]ailure to pay for and remove all awarded items, or all items within a lot within the time frame specified, could result in termination of the contract for default." *Id.*

The Default clause in the GSA Auction T&Cs set forth the following financial consequences for a successful bidder who was determined to be in default:

> As a defaulted bidder, you will be responsible for the payment of liquidated damages, an administrative fee for the processing and re-handling of the item for which you neglected to pay and/or remove. A breakdown of the fee structure follows:
>
> Purchase Price Fee Assessed
>
> If Purchase Price is The Fee Charged will be
>
> . . . .

>$100,000	Fee will be equal to 5% of the award amount

> The Government shall be entitled to retain (and/or to collect) this amount of the purchase price of the item(s) as to which the default occurred.

Exhibit 3 at AF025-026.

The GSA Auction T&Cs included the following statement under the heading "Oral Statements and Modifications" about the authority of individuals other than the contracting officer or his designated representative to modify the successful bidder's agreement:

> Any oral statement or representation by any representative of the Government, changing or supplementing the offering or contract or any condition thereof, is unauthorized and shall confer no right upon the bidder or purchaser. Further, no interpretation of any provision of the contract, including applicable performance requirements, shall be binding on the government unless furnished or agreed to, in writing by the Contracting Officer or his designated representative.

Exhibit 3 at AF019.

The Contracts

Mr. Etzin submitted a bid for Lot 31QSCI20004037 in the amount of $106,500 and for Lot 31QSCI20004038 in the amount of $165,100. On October 10, 2019, GSA notified Mr. Etzin by email that he was the successful bidder for both lots. GSA's award notifications reminded Mr. Etzin that "[p]roperty must be removed within 10 business days from the date and time this email notification was sent to you" and addressed the consequences of failing to do so:

> Failure to . . . remove the property within the specified time outlined in GSA Auctions(SM) on-line Sale Terms and Conditions constitutes a breach of contract, and your contract will be terminated. In addition to contract termination, you will lose all rights, title and interest to the property and may be liable for liquidated damages.

Exhibit 5 at AF036, AF039. In payment receipts that GSA subsequently sent to Mr. Etzin, GSA identified the "date [that the] purchaser must remove property by, unless notified by GSA," as October 24, 2019. Exhibit 6 at AF042, AF044.

Contract Performance

Mr. Etzin did not remove the vessels from the Naval Yard by the contractual deadline. Mr. Etzin has submitted a statement from his representative, Michael Longford, averring that Mr. Longford began working in October 2019 to "explor[e] the feasibility to identify a means of removing the vessels" from the Naval Yard, but there is no dispute that removal of these vessels was going to require the use of a crane, and Mr. Longford avers that the Navy property custodian expressed his understanding in a telephone call in mid-October 2019 that removal of the vessels would take some time and effectively agreed that Mr. Etzin would not have to comply with the contracts' ten-day removal period limitation. Appeal Notice at 7.

The record in this appeal indicates Mr. Longford did not contact a crane operator to request a price quote for removing the vessels until January 9, 2020, almost three months after the award notification. Appeal Notice at 10. After receiving a price quote of almost $100,000 on January 28, 2020, Exhibit 10, he continued negotiating with the crane operator into March 2020 in an effort to reduce the price. Exhibit 7 at AF046, AF049. Mr. Longford responded to an inquiry from the Navy property custodian about status on January 29, 2020, informing the custodian that he was working on obtaining a crane operator to assist with removal, but did not identify or commit to a specific removal date. *Id.* at AF046-047. Mr. Longford continued his communications and negotiations with the crane operator throughout February and March 2020. Appeal Notice at 14-25.

On March 29, 2020, Mr. Longford notified the GSA contracting officer that the crane operating company necessary for the removal of the two vessels had shut down indefinitely because of the COVID-19 pandemic and asked that, "in these exceptional circumstances," GSA refund the money that Mr. Etzin had paid for the boats. Exhibit 9 at AF057. The GSA contracting officer responded on April 17, 2020, indicating that the contracts would be default terminated for non-removal, that liquidated damages would be assessed, and that "[t]he original award for this property and the contractual removal deadline was well before the COVID-19 outbreak and should not have delayed removal." *Id.* at AF061. Nevertheless, the GSA contracting officer did not take immediate action to terminate.

Despite his request that Mr. Etzin's money be refunded, Mr. Longford continued to negotiate with the crane operator throughout April and May 2020. On May 10, 2020, Mr. Longford asked the Navy property custodian whether the Navy was waiting for any other boats to be removed from the Naval Yard with which he could coordinate crane services and reduce Mr. Etzin's removal costs, and the Navy property custodian responded in the negative. Appeal Notice at 29. On May 11, 2020, in response to the Navy property custodian's inquiry, Mr. Longford notified the Navy property custodian that the crane operating company was experiencing delays because of COVID-19. *Id.* Nevertheless, beginning almost immediately thereafter and over the course of the following few weeks,

communications with the crane operating company about near-future vessel removal continued, without mention of any problems with COVID-19. *Id*. at 30-33.

On June 16, 2020, the Navy property custodian asked for another update on what Mr. Etzin was planning, and Mr. Longford responded on June 24, 2020, that he was still working with the crane operating company and hoped for a firm removal date soon. Appeal Notice at 33-34. By July 1, 2020, the Navy property custodian had learned that Mr. Etzin had yet to sign a contract with the crane operating company and that there was no scheduled date for removal. Exhibit 9 at AF071-072. He communicated that information to the GSA contracting officer. *Id.*

Termination and Appeal

By letter dated July 16, 2020, the GSA contracting officer terminated Mr. Etzin's contracts for default and, according to GSA, assessed "liquidated damages," which we presume are the 5% fee at issue here, against Mr. Etzin.[2] That same day, Mr. Etzin submitted an electronic funds transfer form seeking refund of the $271,600 that he had paid for the two vessels. GSA refunded Mr. Etzin's money, except that it withheld $13,580 — representing 5% of the original purchase amounts — as a non-removal default fee in accordance with the GSA Auction T&Cs Default clause.

On August 4, 2020, Mr. Etzin submitted a request to the GSA contracting officer that the $13,580 default fee be returned to him, Exhibit 11 at AF076, a request that the contracting officer treated as a claim under the Contract Disputes Act (CDA), 48 U.S.C. § 7101-7109 (2018). In his claim, Mr. Etzin complained that, even though the solicitation listings might have suggested that a crane would be necessary to lift the vessels for removal, they did not make clear that it would cost $100,000 to do so, and he reasonably should have been able to assume that it would have cost no more than $500 or $1000 to effectuate removal and that, because of what he viewed as essentially unfair trading practices, GSA should release the rest of his money. Exhibit 11 at AF076.

By final decision dated August 8, 2020, the GSA contracting officer denied Mr. Etzin's request to return the default fee and notified Mr. Etzin of his right under the CDA to appeal the decision to the Board. Exhibit 1. The Clerk of the Board received Mr. Etzin's notice of appeal on September 23, 2020. Subsequently, the Board designated Mr. Etzin's

[2] The GSA contracting officer's termination notice of July 16, 2020, is not in the record of this appeal, but it is described in the contracting officer's final decision dated August 8, 2020 (Exhibit 1).

notice of appeal as the complaint, and the Government, rather than file an answer, filed a motion to dismiss for failure to state a claim. Briefing on that motion is now complete.

Discussion

The Standard of Review

In light of Mr. Etzin's pro se status and some initial filing delays in the appeal, the Board elected to designate Mr. Etzin's notice of appeal as the complaint in this matter, as permitted by Board Rule 6(a) (48 CFR 6101.6(a) (2019)). Although GSA filed a motion to dismiss for failure to state a claim in lieu of filing an answer, GSA cites in its motion to documents, including various email exchanges, that are contained in the appeal file, but are not referenced in the notice of appeal.

"In general, a case can only be dismissed for failure to state a claim upon which relief may be granted when that conclusion can be reached by looking solely upon the pleadings." *SRA International, Inc. v. Department of State*, CBCA 6563, 20-1 BCA ¶ 37,543 (quoting *A to Z Wholesale v. Department of Homeland Security*, CBCA 2110, 11-1 BCA ¶ 34,674). Because materials beyond the complaint are referenced in GSA's motion, we will consider the motion as one for summary judgment. *Ibarra v. Department of Homeland Security*, CBCA 1986, 10-2 BCA ¶ 34,573. The conversion of the dispositive motion should not prejudice Mr. Etzin, even though it comes after briefing is complete, given that, in its order dated January 8, 2021, the Board directed Mr. Etzin to attach, in his response to GSA's motion, any evidentiary documents that were not already in the record that he wanted the Board to consider in evaluating his claim. In response, Mr. Etzin included several evidentiary email exchanges with government representatives as an appendix to his response. *See Easter v. United States*, 575 F.3d 1332, 1335 (Fed. Cir. 2009) (if the non-moving party introduces extra-pleading material in its response brief, the party is deemed to be on constructive notice that the tribunal may convert the motion into one for summary judgment). Accordingly, viewing GSA's motion as one for summary judgment is warranted in the circumstances here.

"[S]ummary judgment is appropriate when no material facts" — that is, facts that could affect of the outcome of the case — "are in dispute and the moving party is entitled to judgment as a matter of law." *Harris IT Services Corp. v. Department of Veterans Affairs*, CBCA 5814, et al., 20-1 BCA ¶ 37,533 (2019). When deciding a motion for summary judgment, all reasonable inferences and presumptions must be resolved in favor of the non-moving party. *Silver Springs Citrus, Inc. v. Department of Agriculture*, CBCA 1659, 10-2 BCA ¶ 34,537. Nevertheless, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'"

Id. (quoting *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

Whether Mr. Etzin Was In Default

The fact of Mr. Etzin's default is indisputable. Under the written terms of his two contracts, he had ten days from October 10, 2019 — the date on which he was notified of his awards — to remove from the Naval Yard the vessels that he had purchased. He could not remove those vessels without a crane, and neither he nor his representative made contact with a crane operator to make arrangement for crane services until January 2020, long after the ten-day removal period had ended. Even then, Mr. Etzin did not agree to crane services because they seemed too expensive, and delays in removal continued for additional months while his representative tried to find a better crane price. Despite his assertions that the Government had to have known that removal efforts would be complex and require extensive time, the solicitations on which he bid told him that he had only ten days to remove the vessels, and he cannot blame the Government for his failure to take that contractual obligation seriously. His actions immediately after receiving these contract awards lacked any urgency and placed a burden on the agency, which he expected would simply wait for him, to keep the vessels for however long a period he chose before he took action. Although he argues that the agency should have provided him greater assistance in planning for and effectuating removal, the solicitations expressly stated that bidders should not expect such assistance from the Government. We have little sympathy for Mr. Etzin's assertions that he has been mistreated by the agency.

In his response to the Government's dispositive motion, Mr. Etzin asserts four specific defenses to GSA's finding that he was in default, each of which we address below:

First, Mr. Etzin argues that the agency is barred by the doctrine of "contractual estoppel" from terminating the contracts for default. In explaining that argument, he asserts that the Navy property custodian waived the ten-day contractual deadline for removal by agreeing, in a telephone call in mid-October 2019, that removal of the vessels would be a complex and lengthy process and that, because of "the unique logistical challenges involved in their removal," Mr. Etzin would not be required to abide by the contractual time limits. Appellant's Response Brief at 1. "This amounted to a waiver of conduct by the GSA" upon which Mr. Etzin relied, rendering "any requirement for a 'timely removal' [of] no contractual effect and creat[ing] a contractual estoppel." *Id.*

Mr. Etzin's argument, which we view as more of a waiver argument than a true estoppel argument, must fail. Waiver is an intentional relinquishment of a known right that must be supported by clear, decisive, and unequivocal conduct or statements of *authorized* government officials. *Alliance Business Enterprises LLC v. General Services*

Administration, CBCA 1101, 08-2 BCA ¶ 33,994. The alleged oral representations upon which Mr. Etzin relies are not those of the GSA contracting officer, but come from the Navy property custodian. The terms and conditions applicable to the contracts at issue expressly provide that "[a]ny oral statement or representation by any representative of the Government, changing or supplementing the . . . contract or any condition thereof, is unauthorized and shall confer no right upon the bidder or purchaser." Exhibit 3 at AF019. Any agreement that Mr. Etzin's representative allegedly made with the Navy property custodian to waive the ten-day limitation cannot bind GSA or create an enforceable waiver.

To the extent that Mr. Etzin is truly seeking to raise a "contractual estoppel" argument, which is a concept that typically appears in patent and insurance law cases rather than government contracts cases, *see, e.g.*, *Flex-Foot, Inc. v. CRP, Inc.*, 238 F.3d 1362, 1367-68 (Fed. Cir. 2001); *Stevens v. United States*, 29 F.2d 904, 905 (8th Cir. 1928), estoppel by contract "is not, strictly speaking, a species of estoppel in pais, since it is based wholly on a written instrument." *Federal Deposit Insurance Corp. v. Gramercy Club of Edina*, No. 09-1937, 2010 WL 11537552, at *6 (D. Minn. Aug. 31, 2010) (citations omitted). Under that doctrine, "[i]f, in making a contract, the parties agree upon or assume the existence of a particular fact as the basis of their negotiations, they are estopped to deny the fact so long as the contract stands, in the absence of fraud, accident, or mistake." *Stevens*, 29 F.2d at 905 (citation omitted). Given that this appeal focuses on the proper interpretation of Mr. Etzin's contracts, it seems unnecessary to add the "contractual estoppel" doctrine to the accepted contract interpretation principles that normally govern contract interpretation disputes. In any event, Mr. Etzin does not allege that any authorized individual within the Federal Government entered into a written agreement with him eliminating the ten-day requirement for vessel removal, rendering the "contractual estoppel" doctrine irrelevant here.[3]

Second, Mr. Etzin argues that COVID-19 created a post-award impossibility or impracticability that renders the contracts unenforceable and entitles him to a full refund of the purchase price of the vessels. The burden of proving such a defense is on the contractor. *Singleton Enterprises v. Department of Agriculture*, CBCA 2136, 12-1 BCA ¶ 35,005. "The defense requires appellant to show that: (1) a supervening event made performance

[3] To the extent that Mr. Etzin intended to allege equitable estoppel rather than contractual estoppel, equitable estoppel, if ever applicable against the Federal Government, requires (in addition to the traditional elements of equitable estoppel) some form of "affirmative misconduct" by the Government. *Zacharin v. United States*, 213 F.3d 1366, 1371 (Fed. Cir. 2000). The absence of an allegation of affirmative misconduct, much less evidence of it, precludes such an argument here. Further, the fact that the government agent upon whose alleged representation Mr. Etzin relies lacked authority to modify the ten-day removal requirement precludes, in and of itself, an equitable estoppel argument. *MLJ Brookside, LLC v. General Services Administration*, CBCA 3041, 15-1 BCA ¶ 35,935.

impracticable or impossible; (2) the non-occurrence of the event was a basic assumption upon which the contract was made; (3) the occurrence of the event was not appellant's fault; and (4) appellant did not assume the risk of occurrence." *Id.* "Performance is only excused under this doctrine when it is objectively impossible," and the contractor must show not only that it was "incapable of performing," but that "no similarly-situated contractor could have performed." *Seaboard Lumber Co. v. United States*, 308 F.3d 1283, 1294 (Fed. Cir. 2002). Further, the contractor "must further establish that he 'explored and exhausted alternatives before concluding that the contract was legally impossible or commercially impracticable to perform.'" *Crane & Co. v. Department of the Treasury*, CBCA 4965, 16-1 BCA ¶ 36,539 (quoting *Massachusetts Bay Transportation Authority v. United States*, 254 F.3d 1367, 1373 (Fed. Cir. 2001)). After COVID-19 restrictions began in March 2020, the crane operator with which Mr. Etzin's representative had been dealing still expressed willingness to work with Mr. Etzin to remove the vessels, at least through early June 2020 when it seems to have stopped responding to Mr. Longford's emails, and did not indicate that COVID-19 would preclude removal activities. That Mr. Etzin did not hire the crane operator speaks more to his lack of desire to pay fees beyond what he wanted to pay and his failure to investigate the cost of crane operating services before he originally submitted his bids for the two vessels, rather than an inability of a crane contractor to provide services. There is no evidence that Mr. Etzin or his representative attempted to bring in any other crane operator. That is not a viable supervening impossibility or impracticability claim.[4]

Third, Mr. Etzin argues that the doctrine of frustration of purpose allows him to exit the contracts without penalty, relying again upon the COVID-19 pandemic and the resulting shutdown of businesses available to assist in removal. "Under the frustration defense, the promissor's performance is excused because changed conditions have rendered the performance bargained from the promissee worthless, not because the promissor's performance has become different or impracticable." *Seaboard Lumber*, 308 F.3d at 1296 (quoting *Everett Plywood Corp. v. United States*, 651 F.2d 723, 729 (Ct. Cl. 1981)). The doctrine "applies only when the frustration is without the fault of the party who seeks to take

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[4] Traditionally, a supervening impossibility under a government contract (as opposed to an "existing" impossibility based upon facts in existence at the time of contract award) has been treated "under excusable delay provisions" rather than as a basis for excusing all performance under a contract. John Cibinic, Jr., James F. Nagle & Ralph C. Nash, Jr., *Administration of Government Contracts* 289 (5th ed. 2016). Although Mr. Etzin's contracts contained no excusable delay provisions, Mr. Etzin could have, but never, requested a time extension from the GSA contracting officer for completing vessel removal, did not take reasonable steps to contract with a crane operating company either before or after COVID-19 precautions became necessary, and took no time-is-of-the-essence steps actually to move forward with removal even on a delayed basis. He cannot support either an excusable delay or supervening impracticability argument under these facts.

advantage of the rule," Restatement (Second) of Contracts § 254 cmt. b (1981), and "[i]t is not enough that the transaction has become less profitable for the affected party or even that he will sustain a loss." *Id.* § 254 cmt. a. The party alleging frustration "bears a heavy burden in proving the defense," *Everett Plywood*, 651 F.2d at 729, and "cannot escape performance . . . by arguing that its profit motive is frustrated." *Seaboard Lumber*, 308 F.3d at 1296. The record here contains nothing suggesting that COVID-19 rendered the two vessels that Mr. Etzin had purchased worthless or that it even affected their value. Mr. Etzin's gripe is with the high cost of crane operating services, an issue that existed long before COVID-19. The frustration defense is unavailable in these circumstances.

Fourth, Mr. Etzin argues that he should have received a full refund because the "contracts were cancelled too prematurely given the extraordinary logistics that were required to remove these boats whilst also dealing with lockdown measures from the pandemic." Appeal Notice at 1. To the extent that he is asserting that he was entitled to some kind of pre-termination notice with a specific window of additional time, beyond the contractually-imposed ten-day limit, to remove the two vessels from the Naval Yard, his contracts contain no such requirement. In fact, another set of terms and conditions that the GSA Auction T&Cs incorporated by reference contains a default clause that would have required, after a buyer fails to meet the ten-day removal requirement, a fifteen-day written notice of default providing the contractor an opportunity to cure before actual default termination fifteen days later. *See* Exhibit 3 at AF013 (incorporating General Sales Terms and Conditions Standard Form (SF) 114C (Apr. 2001)). However, that SF114C default clause is expressly superceded and replaced by the GSA Auction T&Cs' Default clause, which eliminates the fifteen-day notice requirement and permits the GSA contracting officer to terminate the contracts at any time after the ten-day removal period has passed if removal has not been effectuated. *Id.* at AF025. The drafting history of the provisions of the contracts at issue here shows GSA's express intent to eliminate the type of additional notice requirement that Mr. Etzin appears to believe he should have received. Given that Mr. Etzin's representative actually requested that the contracts be terminated in late March 2020 and never expressly withdrew that request, Mr. Etzin's suggestion that he should have received an additional pre-termination notice seems misplaced.

Mr. Etzin has failed to establish a valid defense to the GSA contracting officer's finding of default or to his decision to terminate the two contracts for default.

The Assessed 5% Fee

The GSA contracting officer's collection of a 5% default fee of $13,580 after finding the contractor in default is consistent with the provisions of the GSA Auction T&Cs incorporated into these contracts. The Default clause expressly indicates that a contractor who failed to remove purchased property within ten business days would be considered to

be in default and that such failure "could result in termination of the contract for default," at the GSA contracting officer's discretion. Exhibit 3 at AF025. The clause further provides that, "[a]s a defaulted bidder, you will be responsible for the payment of liquidated damages," which it defines as "an administrative fee for the processing and re-handling of the item for which you neglected to pay and/or remove." *Id.* It states that, if the original purchase price exceeded $100,000, the "[f]ee will be equal to 5% of the award amount" and that "[t]he Government shall be entitled to retain . . . this amount." *Id.* at AF025-26. The dollar amount of each of the two lots that Mr. Etzin purchased exceeded $100,000, rendering a 5% default fee on each lot appropriate, and GSA properly calculated the amount of the $13,580 fee, which is 5% of the total $271,600 that Mr. Etzin had paid for the two lots. Mr. Etzin has no basis for challenging it.

Decision

For the foregoing reasons, the appeal is **DENIED**.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

We concur:

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge