UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION IN LIMINE GRANTED: December 9, 2022

CBCA 7145

TEAM SYSTEMS INTERNATIONAL LLC,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

James Y. Boland of Venable LLP, Tyson, VA; Christopher G. Griesedieck and Lindsay M. Reed of Venable LLP, Washington, DC; and David W. Carickoff of Archer & Greiner, P.C., Wilmington, DE, counsel for Appellant; and George L. Miller of Miller, Coffee, Tate, LLP, Philadelphia, PA, Trustee for Appellant.

Rafael Lara, Jr., Jeffrey D. Webb, Sarah Jaward, and Matthew Lane, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **DRUMMOND**, and **SHERIDAN**.

SHERIDAN, Board Judge.

ORDER

Pending before the Board is respondent Federal Emergency Management Agency's (FEMA's) motion to exclude the written reports of Christopher Reed, John Larson, and H. Roy Washburn, III. Appellant, Teams Systems International LLC (TSI), has proposed these three individuals as experts and submitted the respective reports as appeal file exhibits.

We restyle the motion to exclude as a motion in limine. For the reasons set forth below, the motion is granted.

Background

TSI and FEMA elected record submission without a hearing, pursuant to Board Rule 19, 48 CFR 6101.19 (2021). A schedule was set, and on September 23, 2022, appellant timely submitted a supplement to the appeal file. Appellant titled the documents that it submitted as "Expert Report of Christopher Reed," "Expert Report of John Larson," and "Expert Report of H. Roy Washburn, III" and marked them as exhibits 28, 29, and 30, respectively.

Mr. Reed, in his signed submission dated August 26, 2022, indicates that he is the founder and chief information officer of Reeds's Inc., the maker of two craft soda lines. Mr. Larson, in his signed submission dated August 26, 2022, indicates that he is the founder and chief executive officer of GLOW beverages, which manufactures several water-based products. Both of these individuals wrote about their experience in their respective industries and opined on how the contract at issue should be interpreted. They addressed the impracticability of a beverage supplier's returning or restocking beverages that had left the supplier's control, e.g., left the supplier's warehouse. They opined that, due to regulations, a supplier cannot typically reuse beverages that leave its control. Mr. Washburn, a self-proclaimed expert in government contracting, indicated in his report dated August 26, 2022, that he has worked in government contracting since 2000 and is currently the vice president of compliance at ATAP, Inc., a government contractor. He also offers his opinion on how the contract at issue should be interpreted. We note that none of these proposed experts addressed the specific facts presented by this case as to where the water was located upon cancellation and, more importantly, why no restocking fees were charged to TSI by its supplier. The reports offer no valuable evidence to assist us in deciding the remaining issues in this appeal.

FEMA filed a timely objection to appellant's supplement asking the Board to exclude exhibits 28, 29, and 30, stating that the documents are not relevant to the claim because "[t]he Board has already addressed the interpretation of [the contract] as a matter of law, and any proposed factual 'evidence' on this issue is not relevant."

Discussion

"The Board considers appeal file exhibits part of the record for decision under Rule 9(a) unless a party objects to an exhibit within the time set by the Board and the Board sustains the objection." Rule 4(g). As FEMA has objected to the inclusion of proposed

exhibits 28, 29, and 30, we must rule on FEMA's objection to appellant's supplement to the appeal file, which we have restyled as respondent's motion in limine.

The purpose of a motion in limine is "to prevent a party before trial from encumbering a record with irrelevant, immaterial, or cumulative matters." *J.R. Roberts Corp.*, DOT BCA 2499, 94-2 BCA ¶ 26,645, at 132,558 (quoting *Baskett v. United States*, 2 Cl. Ct. 356, 367-68 (1983)); *see Palmerin v. City of Riverdale*, 794 F.2d 1409, 1413 (9th Cir. 1986) ("Pretrial motions are useful tools to resolve issues which would otherwise 'clutter up' the trial."). "Such a motion enables a [tribunal] to rule in advance on the admissibility of documentary or testimonial evidence and thus expedite and render efficient a subsequent trial." *J.R. Roberts*, 94-2 BCA at 132,558 (quoting *Baskett*, 2 Cl. Ct. at 368).

Approximately eight months prior to this motion, on January 27, 2022, the Board issued a decision on the parties' motions for summary judgment. *See Teams Systems International, LLC v. Department of Homeland Security*, CBCA 7145, 22-1 BCA ¶ 38,045. The Board found that the contract terms related to restocking were unambiguous and interpreted the contract accordingly. *Id.* at 184,757. However, the Board denied the motion because there were genuine issues of material fact as to whether TSI suffered actual harm when FEMA reduced the task order quantity. *Id.* TSI did not request reconsideration.[1]

TSI, by its submission of proposed exhibits 28, 29, and 30, seeks to have the Board reopen and reconsider the conclusions that it reached in its January 2022 decision. At the time that the Board made its decision, TSI had every opportunity to submit these reports but did not. The three proposed exhibits essentially go to how the Board should interpret the contract, which we already did in our January 2022 decision. These proposed exhibits, however, would not have changed that decision because the contract is not ambiguous, and the Board's focus has always been on whether TSI actually incurred restocking fees.

That TSI wants at this late stage to introduce new evidence to reargue our interpretation of the contract set forth in the January 2022 decision, this time arguing trade practice, is neither timely nor acceptable. The reports clearly are extrinsic evidence. The Board did not find the contract language at issue to be ambiguous, and so no extrinsic evidence was needed to assist in our interpretation. *See Master's Transportation v. General Services Administration*, CBCA 6565, 22-1 BCA ¶ 38,001, at 184,552 ("We see no need to examine extrinsic evidence, such as industry standards, when the contract's requirements are unambiguous."); *Sam's Electric*, GSBCA 8497, 89-3 BCA ¶ 22,166, at 111,544 ("Although

[1] Shortly before the Rule 19 briefs were due, FEMA filed a second motion for summary judgment. The Board deferred ruling on the late-filed motion for summary judgment, electing instead to decide the case pursuant to Rule 19.

evidence of trade usage may be admitted to ascertain the parties' intent, it cannot overcome an unambiguous contract provision." (citing *WRB Corp. v. United States*, 183 Ct. Cl. 409 (1968))). "[A] court should accept evidence of trade practice only when a party makes a showing that it relied reasonably on a competing interpretation of the words when it entered into the contract." *Metric Constructors, Inc. v. National Aeronautics & Space Administration*, 169 F.3d 747, 752 (Fed. Cir. 1999). TSI's interpretation of *Metric Constructors* as requiring the Board to consider evidence of trade practice to create an ambiguity where an ambiguity does not exist is incorrect. We, therefore, exclude the reports of Messrs. Reed, Larson, and Washburn from the appeal file and the record.

Decision

Respondent's objection to the proposed appeal file exhibits 28, 29, and 30, which the Board restyled as a motion in limine, is **GRANTED**. Proposed exhibits 28, 29, and 30 are excluded from the appeal file and are not part of the record.

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

We concur:

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

Jerome M. Drummond
JEROME M. DRUMMOND
Board Judge