



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: September 16, 2025

CBCA 8422

CADUCEUS HEALTHCARE, INC.,

Appellant,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent.

Veronica Beuther, Vice President of Caduceus Healthcare, Inc., Marietta, GA, appearing for Appellant.

Jared C. Bruff and Jorge I. Correa, Office of the General Counsel, Department of Health and Human Services, Atlanta, GA, counsel for Respondent.

**BEARDSLEY**, Board Judge (Chair).

Appellant, Caduceus Healthcare, Inc. (Caduceus), appeals the contracting officer's (CO) final decision to deny payment in the amount of \$146,583.14 for services rendered because Caduceus exceeded the contract's ceiling price without giving advance notice to the Government. Caduceus has elected expedited, non-precedential disposition of this appeal by a single board judge under the small claims procedure in Board Rule 52 (48 CFR 6101.52 (2024)). The parties have agreed to a decision on the written record, without a hearing, pursuant to Board Rule 19. For the foregoing reasons, the Board denies the appeal.

### Background

On September 10, 2020, the Department of Health and Human Services (HHS) established a multiple-award blanket purchase agreement (BPA) under the General Services Administration (GSA) Services Schedule for the Centers for Disease Control and Prevention (CDC) Division of Global Migration and Quarantine (DGMQ). Exhibit 2.<sup>1</sup> The CDC sought out contractors to “provide programmatic support for preparedness and entry screening operation” during emergency response operational activities. *Id.* at 4.

In 2022, the CDC issued task order 75D30122F15065 under the BPA for DGMQ Surge Support Emergency Response Operations to Caduceus. Exhibit 7 at 1, 29. The task order listed the contract line item number (CLIN) for each service provided along with a ceiling price and description. *Id.* at 2-18. CLINs were listed for the base period as well as the option periods and delineated the services provided under each CLIN. *Id.* Below each CLIN’s extended price were the words “NOT-TO-EXCEED,” denoting the ceiling price for that CLIN. *Id.* at 2-11. At issue here is the payment of services covered by CLIN 2001, which had a ceiling price of \$1,429,428.67. *Id.* at 14.

The task order was a time-and-materials contract (“contract”) that included Federal Acquisition Regulation (FAR) 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts (AUG 2012) (48 CFR 52.232-7 (2021)) (Payments clause), and FAR 52.243-3, Changes-Time-and-Materials or Labor-Hours (SEPT 2000) (Changes clause). Exhibit 7 at 19. FAR 52.232-7(d) states:

*Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the

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<sup>1</sup> All exhibit references are to respondent’s appeal file exhibits, unless otherwise noted.

Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

If a contractor does not give the Government notice that it may reach the ceiling price, the Payments clause provides:

*Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract.

FAR 52.232-7(e).

Under the contract's Changes clause, adjusting the ceiling price for CLIN 2001 required the CO to issue a written modification. FAR 52.243-3(b)(1). The CO issued a total of five modifications to the task order during the performance of the contract, none of which increased the ceiling price for the contract as a whole or any individual CLIN. *See* Exhibits 8-12. Modifications were used to allocate funds to specific CLINs and exercise option periods. Exhibits 8-11. Modification 00005 "exercise[d] CLIN 2001 in the amount of \$1,429,428.67 with a period of performance of [August 21, 2023, to August 20, 2024, and] fully fund[ed] CLIN 2001 in the amount of \$1,429,428.67." Exhibit 12 at 1. The CDC did not exercise the remaining option periods, effectively ending the task order on August 20, 2024. Exhibit 1 at 1.

On August 7, 2024, Caduceus submitted its invoice for time worked under the contract in July 2024, totaling \$146,583.14. Exhibit 25. On September 10, 2024, the CDC refused to pay the invoice because payment of the invoice would have exceeded CLIN 2001's ceiling price. Exhibit 30. Thereafter, Caduceus submitted a certified claim to the CO for payment of the July 2024 invoiced amount. Exhibit 34. Caduceus alleged that it "consistently raised concerns about budget constraints with multiple contracting representatives and CDC Points

of Contact (POCs), including in our June 4, 2024, correspondence and during a meeting attended by the current Contracting Officer in May 2024” and that, “[d]espite these warnings, Caduceus was directed to maintain near-perfect shift coverage.” *Id.* at 2. Caduceus stated further that “[w]hile we understand FAR 52.232-7 limits payment beyond the contract ceiling unless formally adjusted, we acted in good faith based on the presumption that funding adjustments would follow.” *Id.* at 3. The CO issued his final decision denying Caduceus’s claim for payment because Caduceus had not notified the CO that its performance was expected to exceed the ceiling price and the CO “never provided a written notification that the ceiling price would be increased.” Exhibit 1 at 2. Caduceus timely appealed to the Board the CO’s final decision denying its claim.

Caduceus tracked its CLINs by hours of service performed and the amount billed to the CDC. Exhibit 35 at 2. The spreadsheet that tracked this data also included a projected monthly budget that Caduceus would need to meet in order to stay within CLIN 2001’s ceiling price for option period two. *Id.* Caduceus’s actual expenses were consistent with its projected budget for CLIN 2001 from the beginning of the option period until May and June 2024, when the costs incurred were higher than projected. *Id.* Therefore, by May 2024, Caduceus knew that it would exceed the ceiling price for CLIN 2001. There is no indication as to when this document was shared with the CDC.

Caduceus asserts that “[a]s labor costs approached the ceiling in early February 2024, Caduceus began reducing shift coverage. Instead of authorizing a reduction, the CO escalated the matter to Caduceus’s CEO and explicitly instructed the company to maintain full staffing due to urgent public health needs.” Appellant’s Response Brief at 2. Caduceus asserts that in a May 21, 2024, call with the CO, Caduceus raised concerns about nearing the labor-hour ceiling. *Id.* According to Caduceus, the CO dismissed these concerns, stating that “‘Caduceus should be managing by hours,’ and questioned why funding was even being raised.” *Id.* Caduceus asserts that “[n]o follow-up action or modification ensued.” *Id.* Caduceus, however, provides no documents (emails or affidavits) to support these assertions.

Around this same time, the CDC expressed concerns with the competency of Caduceus’s staff and the frequent lack of staffing coverage at various locations as required by the task order. On June 4, 2024, Caduceus replied in writing to the CDC’s concerns, stating that “[d]espite our requests to add more PRN<sup>2</sup> staff, we have been informed that this

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<sup>2</sup> In the medical field, PRN stands for “pro re neta,” which translates to “as the need arises.” PRN refers to nurses who do not work on a set schedule but work whenever they are needed.

is not possible due to budget constraints.” Exhibit 16 at 3.<sup>3</sup> In this same performance document, Caduceus concluded, “While we prefer to expand our PRN staff to provide 100% coverage, we work within the CDC’s budget constraints to ensure compliance. It is important to note that despite maintaining a small PRN group, we achieved over a 95% fill rate, which is in line with previous CDC contracts. This is a significant accomplishment for a staffing contract.” *Id.* at 5. This document does not mention exceeding the ceiling price but simply responds to performance matters raised by the CDC, such as staff absences, dress code violations, unreliable schedules, poor work, onboarding issues, and difficulties forecasting coverage.

In a September 2024 email exchange between Caduceus and the CO, Caduceus stated:

After a thorough review of our email correspondence, we did not locate any specific communications indicating that we were over budget or at risk of exceeding our funding. However, during our initial meeting on May 21, 2024, I explained that the primary reason we were unable to cover all shifts was due to budget constraints. Covering all shifts required an average of 2,080 hours per person, while our contract only allocated 1,786 hours per person. We maintained an average of only one PRN staff member for each position and station to stay within budget limits.

Additionally, our employees are entitled to approved time off, which was factored into the contract. This issue was also addressed in the meeting as well as in our response submitted June 4, 2024, addressing CDC concerns. Given the requirement to cover all shifts, it was evident that exceeding the budget was highly likely under these circumstances.

Exhibit 29 at 1-2. Caduceus stated further that it assumed that “the likelihood of exceeding the budget was understood following our initial call on May 21, 2024.” *Id.* at 2. The CDC responded, stating:

I was on the 5/21/2024 call and there was no confusion of the “likelihood of exceeding the budget was understood following our initial call on May 21, 2024” as you wrote. It was never indicated. . . . Also, the Contractor is to

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<sup>3</sup> This document is not dated and indicates that it is a draft response. Nothing on this exhibit indicates to whom at the CDC the document was sent, and there are no contemporaneous emails in the record showing to whom it was sent.

notify the Government when it reaches 85% of the Not-To-Exceed amount in the Schedule. I have no record of receipt.

*Id.* at 1.

### Discussion

#### The CLIN 2001 Ceiling Price

All work described in CLIN 2001 had to be done within the limits of its ceiling price. Exhibit 7 at 5; FAR 52.232-7(d)-(e). Caduceus was required to notify the CO, if at any time, it had “reason to believe that the hourly rate payments and material costs that [would have] accrue[d] in performing [the] contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, [would have] exceed[ed] 85 percent of the ceiling price.” FAR 52.232-7(d). A contractor’s timely notice to the CO of potentially exceeding the ceiling price “provide[s] an option to the Government, i.e., it may decide to add more money to the contract if it appears that more will be needed or it can stop the work when the funds have been exhausted regardless of the status of the completion of the work.” *OST, Inc. v. Department of Homeland Security*, CBCA 7077, et al., 23-1 BCA ¶ 38,414, at 186,66-67 (quoting *Consulting Services Corp.*, ASBCA 20288, 76-2 BCA ¶ 12,124, at 58,249).

[T]he Government is generally under no obligation to fund an overrun, although the contracting officer may always exercise his or her discretion to do so. *See, e.g., General Electric Co. v. United States*, 412 F.2d 1215, 1220 (Ct. Cl. 1969); *JJM Systems, Inc.*, ASBCA 51152, et al., 03-1 BCA ¶ 32,192; *PB Farradyne, Inc.*, DOTCAB 4063, 00-1 BCA ¶ 30,683 (1999); *Arbiter Systems, Inc.*, ASBCA 47403, et al., 97-2 BCA ¶ 29,183, *aff’d*, 178 F.3d 1311 (Fed. Cir. 1998) (table), *cert denied*, 527 U.S. 1003 (1999). At the same time, “a heavy burden of self-protection against cost overruns” is placed upon the contractor and cost limitation clauses may be invoked to bar recovery of overruns against a contractor that fails to protect itself either by providing the requisite notice of overrun or by stopping work when funds run out. *Falcon Research & Development Co.*, ASBCA 26853, 87-1 BCA ¶ 19,458, *aff’d mem.*, 831 F.2d 1056 (1987).

*Ray Communications, Inc. v. Department of State*, GSBGA 15509-ST, 06-1 BCA ¶ 33,273, at 164,916 (footnotes omitted).

Caduceus cannot recover the costs for the services provided in July 2024 because Caduceus failed to notify the CDC that it was at risk of exceeding the ceiling price for CLIN

2001. Caduceus also failed to provide “a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation.” FAR 52.232-7(d). Caduceus asserts that references to its staffing issues due to budget constraints should have alerted the CO to the likelihood that Caduceus would exceed the ceiling price. However, not only is it unclear if and when these references to “budget constraints” were made, but some of the statements – that Caduceus was working “within the CDC’s budget constraints to ensure compliance” and that Caduceus had achieved “a 95% fill rate” – seem to suggest that Caduceus understood and was able to meet the contract’s staffing requirements, despite the budget constraints, in accordance with the task order’s terms and conditions. To the extent that Caduceus made general references to working within budget constraints, such references did not provide the requisite notice to the CO that Caduceus may exceed the ceiling price. *Noma Corp.*, AGBCA 78-168-4, 81-1 BCA ¶ 15,139, at 74,889 (citing *Forge Aerospace Inc.*, ASBCA 22157, 79-1 BCA ¶ 13,746, *aff’d on reconsideration*, 79-2 BCA ¶ 13,922) (finding that general statements of the possibility of an overrun do not constitute sufficient notice).

Moreover, Caduceus continued to perform and incur costs in excess of the ceiling price for CLIN 2001 without express authorization from the CO. “A contractor cannot create an obligation on the part of the Government to reimburse it for a cost overrun by voluntarily continuing performance and incurring costs after the cost limit has been reached.” *North American Rockwell Corp.*, ASBCA 14329, 72-1 BCA ¶ 9207, at 42,722 (1971). Caduceus admits that it assumed, based on the May 21 meeting, that the CO understood that Caduceus would exceed the ceiling price. The CO, however, was not made aware that Caduceus would exceed the ceiling price and did not authorize Caduceus to continue to perform and incur costs in excess of the ceiling price for CLIN 2001.

[A] contractor that performs work in excess of the applicable cost ceiling without obtaining express authorization from the contracting officer [to continue] does so at its own risk, unless it can demonstrate the applicability of an exception to the rule, or that the contracting officer has abused the discretion not to fund the overrun. These exceptions include the following: (1) a change in the contract work; (2) the contractor had no reason to know of and could not have known of, an imminent overrun[;] or (3) some conduct on the part of the Government entitles the contractor to recover the overruns.

*Ray Communications*, 06-1 BCA at 164,916 (citing *OAO Corp.*, DOTCAB 1280, 83-1 BCA ¶ 16,379, at 81,440-41).

Caduceus does not demonstrate that an exception applies. The CDC did not change the contract work, constructively or otherwise. Caduceus contends that the Government’s

direction to perform near-perfect shift coverage caused Caduceus to exceed the ceiling price and constituted a constructive change to the contract work. A constructive change to a contract occurs when “a contractor performs work beyond the contract requirements without a formal order, either by an informal order or due to the fault of the Government.” *Agility Public Warehousing Co. KSCP v. Mattis*, 852 F.3d 1370, 1385 (Fed. Cir. 2017) (quoting *International Data Products Corp. v. United States*, 492 F.3d 1317, 1325 (Fed. Cir. 2007)). “That the [G]overnment continued to expect the contract’s prescribed performance from [Caduceus] at the agreed upon price is not an order to perform additional work.” *Ace Electronics Defense Systems*, ASBCA 63224, 22-1 BCA ¶ 38,213, at 185,569. There was no constructive change to the contract that allowed Caduceus to perform work that exceeded the ceiling price without the express authorization of the CO.

As for the second exception in *Ray Communications* regarding a contractor’s pre-existing knowledge of an overrun, Caduceus foresaw in May 2024 that it would likely exceed its ceiling price, yet it continued to perform without express authorization from the CO that the CDC would fund the cost overruns. “If the overrun is foreseeable, notice must be given.” *Noma Corp.*, 81-1 BCA at 74,889.

Lastly, in order for the CDC’s conduct – ordering full staffing or near-perfect shift coverage – to entitle Caduceus to recover the overrun, the CDC had to know that the work would cause Caduceus to exceed the ceiling price of CLIN 2001 and still direct Caduceus to do it anyway. There is nothing in the record that supports Caduceus’s assertion that the CDC knew or should have known that Caduceus was approaching and might exceed the ceiling price for CLIN 2001. Caduceus contends that “[f]rom the contract’s inception, Caduceus submitted detailed monthly invoices and timesheets via the Invoice Processing Platform (“IPP”), showing actual labor costs, CLIN status, and running totals. These provided the [CDC] and CO with continuous visibility into budget usage. (Exhibits 13, 17, 20, & 28 Invoices).” Appellant’s Response Brief at 1-2. These invoices and time sheets, however, did not provide running totals or CLIN status, and there is no indication that the tracking spreadsheet showing the cost overrun was provided to the CDC during contract performance. Nonetheless, Caduceus, not the CDC, has the burden of determining the existence of an overrun situation. *See Consulting Services*, 76-2 BCA at 58,250 (“Appellant cannot shift its burden to the Government by contending that the Government could have deduced the facts from what had been submitted.”). Neither the contract nor case law required the Government to monitor Caduceus’s performance and invoices to determine if it was going to exceed the ceiling price. *Ray Communications*, 06-1 BCA at 164,919; *see Consulting Services*, 76-2 BCA at 58,249 (finding that monthly vouchers submitted for purposes of reimbursement did not excuse the appellant’s failure to give the required notice). The Government’s conduct, therefore, does not entitle Caduceus to recover the costs it incurred in July 2024 in excess of the ceiling price.



### Unjust Enrichment and Quantum Meruit

Caduceus argues that it is entitled to payment of the July 2024 invoice because the Government has been unjustly enriched. “The doctrine of unjust enrichment, for which quantum meruit is the remedy, is an equitable one, applied to those situations where the rights and remedies of the parties are not defined in a valid contract.” *Arcadis U.S., Inc. v. Department of the Interior*, CBCA 918, 08-1 BCA ¶ 33,807, at 167,353-54; *see John Douglas Burke v. Department of Health & Human Services*, CBCA 7492, 23-1 BCA ¶ 38,304, at 185,976 (a valid contract precludes an unjust enrichment award), *aff’d*, No. 2024-1019, 2024 WL 4579346 (Fed. Cir. Oct. 26, 2024). “The essence of an unjust enrichment claim is that, although no valid contract, either express or implied in fact, exists between the parties, justice requires that we create an obligation of a contractual nature for the sake of providing a remedy.” *Arcadis*, 08-1 BCA at 167,354. Here, Caduceus performed under a valid contract that defined the rights and remedies of Caduceus and the CDC. Caduceus, therefore, may not recover quantum meruit under a theory of unjust enrichment.

### Waiver and Estoppel

Caduceus argues that the Government waived its right to strictly implement the ceiling price for CLIN 2001 because it benefitted from the services received and is, therefore, able to exceed the ceiling price to pay the July 2024 invoice. Waiver is an intentional relinquishment or abandonment of a known right. *Supreme Foodservice GmbH v. Director of the Defense Logistics Agency*, 54 F.4th 1362, 1368 (Fed. Cir. 2022). Caduceus provides no evidence that the CDC intentionally relinquished its right to enforce a ceiling price for the task order or the individual CLINs. *See Decision Science Consortium, Inc.*, IBCA 1651-2-83, 85-3 BCA ¶ 18,350, at 92,015 (When the contracting officer knew of no cost overrun and neither encouraged nor directed the contractor to continue work after exhaustion of contract funding, the cost limitation clause was not waived.).

Estoppel can preclude a party from asserting a right to which it otherwise would have been entitled. *Carter v. United States*, 98 Fed. Cl. 632 (2011).

Four elements must be present to establish an estoppel: (1) the party to be estopped must know the facts, *i.e.*, the government must know of the overrun; (2) the government must intend that the conduct alleged to have induced continued performance will be acted on, or the contractor must have a right to believe the conduct in question was intended to induce continued performance; (3) the contractor must not be aware of the true facts, *i.e.*, that no implied funding of the overrun was intended; and (4) the contractor must rely on the government’s conduct to its detriment. *Hughes Aircraft Corporation*, [ASBCA

24601,] 83-1 BCA [¶ 16,396,] at 81,516; see *United States v. Georgia-Pacific Co.*, 421 F.2d 92, 96 (9th Cir. 1970); *Emeco Industries, Inc. v. United States*, 485 F.2d 652, 657, 202 Ct. Cl. 1006 (1973).

*American Electronic Laboratories, Inc. v. United States*, 774 F.2d 1110, 1113 (Fed. Cir. 1985). Caduceus's argument of estoppel fails. Again, Caduceus did not demonstrate that the CDC knew of the possible overrun. There is no evidence that the CO, with knowledge of a potential overrun, induced Caduceus to work at staffing levels that would cause it to exceed the ceiling price. There is also no evidence that the CDC represented to Caduceus that it would fund a cost overrun. Finally, Caduceus failed "to prove that it reasonably interpreted and relied on any [CDC] conduct" to its detriment. *Hughes*, 83-1 BCA at 81,518. Thus, the estoppel exception does not apply to the strict application of the cost limitation provision.

The Board has considered all other arguments made by Caduceus and deems them to be without merit. The Board is unable to conclude that the CO (1) had notice of the likelihood of an overrun; (2) knowingly induced Caduceus to continue to perform work despite the likelihood of an overrun; or (3) should have known that its conduct was inducing Caduceus to incur an overrun with the expectation of being paid. Because Caduceus opted to continue performance despite its own awareness that it would exceed the ceiling price of CLIN 2001 and without notice to the CO of the possibility it would exceed the CLIN 2001 ceiling price or express authorization from the CO to fund the overrun, Caduceus accepted the risk and liability of the costs incurred.

#### Decision

The appeal is **DENIED**.

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