



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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MOTION FOR SUMMARY JUDGMENT DENIED: March 11, 2025

CBCA 7965

CGS-ACE SECURITY LLC,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Robert Nichols, Michael Bhargava, and Logan Kemp of Nichols Liu LLP, Washington, DC, counsel for Appellant.

Jeffrey A. Regner, Office of the Legal Adviser, Buildings and Acquisitions, Department of State, Rosslyn, VA, counsel for Respondent.

Before Board Judges **KULLBERG**, **ZISCHKAU**, and **KANG**.

**KANG**, Board Judge.

Appellant, CGS-ACE Security LLC, appeals a final decision by a contracting officer of respondent, Department of State (DOS), regarding a contract to provide security services. Respondent has filed a motion for summary judgment, arguing that appellant is not the contractor for the services and, therefore, cannot pursue this appeal. We deny respondent's motion.

## Background

Respondent's motion for summary judgment primarily concerns whether: (1) CGS-ACE Security LLC is the same entity as CGS-ACE JV, and (2) if not the same, which of these two entities entered into the contract with DOS. Because the motion concerns similarly named entities, the names will be used in full throughout this decision.

### I. Solicitation, Proposal, and Award

On August 11, 2020, respondent issued solicitation no. 19AQMM20R0220 for local guard services at the United States Embassy in Luxembourg. Appeal File, Exhibit 2 at 1, 6.<sup>1</sup> The solicitation required the contractor to perform the guard services and did not allow these requirements to be subcontracted. *Id.* at 8, 11. The solicitation, however, allowed offerors to propose as a joint venture, wherein either member of the joint venture could perform the guard services. *See id.* at 123; Respondent's Statement of Undisputed Material Facts ¶ 23. Offerors proposing to perform the contract as a joint venture were required to identify its members. Exhibit 2 at 123.

On September 15, 2020, the agency received a proposal from the following entity, named on the cover page of the technical and price volumes of the proposal: "The CGS-ACE Security Joint Venture C/O Continuity Global Solutions, LLC." Exhibit 31 at 1, 419. Exhibit P to the price volume of the proposal was titled "Offeror Information and/or Signature Page." *Id.* at 5. This exhibit stated that the "Legal Business Name of Entity Submitting Offer" was "CGS-ACE JV" with an address in Falls Church, Virginia. *Id.* The exhibit further stated that the offeror was a joint venture and provided DUNS<sup>2</sup> number 117659162. *Id.* The members of the joint venture were identified as "Continuity Global Solutions" of Falls Church, Virginia, and "ACE Sécurité S.A."<sup>3</sup> of Schouweiler, Luxembourg. *Id.* at 5-6.

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<sup>1</sup> All exhibits are found in the appeal file.

<sup>2</sup> DUNS is the Data Universal Numbering System, managed by Dunn & Bradstreet. Prior to April 2022, DUNS was a unique identifier required for registration in the System for Award Management (SAM). DUNS was replaced by the Unique Entity Identifier. *See* 48 CFR 2.101(b)(2), 4.605(b) (2022).

<sup>3</sup> This entity is named variously in the record as "ACE Sécurité S.A.," "A.C.E. Securitie SA," and other similar permutations. The parties do not dispute that these names all refer to the same Luxembourg business entity.

The proposal's price volume also attached a July 28, 2020, joint venture agreement between "Continuity Global Solutions LLC," and "A.C.E. Securitie SA." Exhibit 31 at 390-406. The joint venture agreement, which was for the purpose of submitting a proposal for the solicitation, did not specify a name for the joint venture. *See id.* The joint venture agreement stated that the agreement "shall be deemed to be made in and in all respects shall be interpreted, construed, and governed by and in accordance with the laws of the District of Columbia." *Id.* at 405.

CGS-ACE Security LLC was incorporated in Delaware on December 23, 2020. Exhibit 30. Since its incorporation, CGS-ACE Security LLC has been a "wholly owned subsidiary of Continuity Global Solutions, LLC." Appellant's Statement of Genuine Issues ¶ 4; Respondent's Statement of Undisputed Material Facts ¶ 4.

On December 21, 2020, the contracting officer sent a letter to "CGS-ACE" titled "Notice of Anticipated Contract Award." Exhibit 33. The letter was addressed to Tauqeer Khalid, the individual designated as the proposal's "Primary Offeror Point of Contact." *Id.*; Exhibit 31 at 5. Mr. Khalid was identified in the proposal as the chief financial officer (CFO) of CGS-ACE JV. Exhibit 31 at 5. The contracting officer, in the letter, requested that "CGS-ACE have their DUNS 117659162 activated in SAM in order for us to make the formal award." Exhibit 33.

On January 13, 2021, Mr. Khalid responded to the contracting officer via email. Exhibit 65 at 1. This email identified Mr. Khalid as the CFO of Continuity Global Solutions. *Id.* The message stated: "Please find attached the active CGS-ACE Security LLC in the SAM system for you to formal issue the award notice." *Id.*<sup>4</sup> The referenced SAM registration entry for CGS-ACE Security LLC used the same DUNS 117659162 that was identified for CGS-ACE JV in the proposal. *Id.*; Exhibit 31 at 5.

On February 1, 2021, the contracting officer sent an email to Mr. Khalid that attached contract no. 19AQMM21C0027. Exhibit 66; *see* Exhibit 2 at 1. The front page of the contract is General Services Administration Standard Form (SF) 33.<sup>5</sup> Exhibit 2 at 1. This form contains Box 15A, "NAME AND ADDRESS OF OFFEROR." *Id.* Next to this box is a space for the following information: (1) "CONTACT," (2) "Attn," and (3) "DUNS." *Id.* The agency entered the following information into Box 15A: "CONTACT: CGS-ACE

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<sup>4</sup> The SAM registration entry for CGS-ACE Security LLC filed in the record is an archived version showing an entity start date of August 31, 2020, and an initial registration date of September 3, 2020. Exhibit 67 at 3.

<sup>5</sup> This appeal concerns the September 1997 version of SF 33.

SECURITY LLC, 7389 LEE HWY STE 207, FALLS CHURCH, VA 22042-1737” and “DUNS: 117659162”; no information was provided for “Attn.” *Id.*

Also on February 1, 2021, Mr. Khalid signed the contract with the information pre-filled by the agency in Box 15A. Exhibit 36 at 1. In this signed version of the contract, Box 16 of SF 33, “NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print),” lists Mr. Khalid with the title “CFO.” *Id.*

## II. Contract Payments and Claims

Section J of the contract is a “List of Attachments,” which are designated as Exhibits A through Y. Exhibit 2 at 59-60. Exhibit P, titled “Offeror Information and/or Signature Page,” is the same document from the proposal’s price volume. Exhibit 2 at 123-25; Exhibit 31 at 5-7. Relevant here, Exhibit P provided for contract payments to “Continuity Global Solutions” through its identified bank. Exhibit 2 at 124.

Despite the contract provision specifying that payments be made to the bank account of Continuity Global Solutions, the agency paid four invoices (April through July 2021) to the bank account of ACE Sécurité S.A. Respondent’s Statement of Undisputed Material Facts ¶ 49. In September 2023, appellant submitted a timely claim to the contracting officer, seeking payment of €531,294.31 for the four invoices. Exhibit 19 at 1. Appellant argued that DOS made payment to the wrong bank account in violation of the contract and that payment to appellant was, therefore, due. In support of its claim, appellant stated that “CGS ACE SECURITY LLC is solely owned by Continuity Global Solutions, LLC (‘CGS’)” and that DOS’s “contract is with CGS ACE SECURITY LLC, not the joint venture between CGS and ACE.” *Id.* at 1, 2.

In November 2023, the contracting officer denied the claim. Exhibit 1 at 1, 5. The contracting officer acknowledged that the disputed payments were made to the bank account of ACE Sécurité S.A. and that these payments “may not have been made in strict conformance with the contract terms[.]” *Id.* at 3-5. The contracting officer, however, disputed that the contractor is CGS-ACE Security LLC, rather than a joint venture between Continuity Global Services and ACE Sécurité S.A., as specified in the proposal. *Id.* at 4. For this reason, the contracting officer determined that, regardless of the party to whom the payments were made, the joint venture received the benefit of the payments, and no further payments were required. *Id.* at 5.

## III. Proceedings Before the Board

Appellant filed this timely appeal of the contracting officer’s final decision, seeking payment of €531,294.31. Respondent filed a motion to dismiss the appeal for lack of

jurisdiction, contending that CGS-ACE Security LLC is not the contractor eligible to file a claim or pursue this appeal. Respondent asserted that CGS-ACE JV submitted the proposal and is, therefore, the entity that entered into the contract with DOS.

Appellant filed its opposition to respondent's motion to dismiss, primarily arguing that CGS-ACE Security LLC and CGS-ACE JV are the same entity and that the contract in any event identifies CGS-ACE Security LLC as the contractor. Respondent, in its reply, argued that appellant in its opposition referenced arguments outside of its complaint and that the motion for dismissal should be converted to a motion for summary judgment.

The Board conferred with the parties and advised that conversion of the motion to a motion for summary judgment was an option as long as appellant was provided an opportunity to revise its opposition to the motion.<sup>6</sup> The parties then requested to bifurcate the issues in this appeal to address: (1) whether there is a contract between DOS and CGS-ACE Security LLC; and (2) if that issue was answered in the affirmative, whether appellant is entitled to payment under the four invoices. The parties conducted limited discovery on the first issue. Respondent then filed this motion for summary judgment.

### Discussion

The parties agree that the appellant is CGS-ACE Security LLC. The parties also agree that respondent paid certain amounts owed under the contract to ACE Sécurité S.A. and not Continuity Global Solutions, as specified in the contract. Respondent contends, however, that appellant did not enter into the contract with DOS. Instead, respondent argues that CGS-ACE JV submitted the proposal and that this entity, rather than CGS-ACE Security LLC, is the contractor eligible to submit a claim. Respondent primarily relies on three arguments: (1) the corporate structures of CGS-ACE Security LLC and CGS-ACE JV are different; (2) the entities were formed at different times under different state laws; and (3) the proposal submitted in response to the solicitation identified CGS-ACE JV as the offeror and did not mention CGS-ACE Security LLC. Respondent seeks summary judgment on its position that the Government did not enter into a contract with appellant, CGS-ACE Security LLC, and that there is no claim for the Board to review.

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<sup>6</sup> A motion to dismiss may be converted to a motion for summary judgment where matters outside the pleadings are presented, provided all parties are given a reasonable opportunity to present all of the material that is pertinent to the motion. *1000-1100 Wilson Owner, LLC v. General Services Administration*, CBCA 6506, 20-1 BCA ¶ 37,642, at 182,764 (citing *JRS Management v. Lynch*, 621 F. App'x 978, 981 (Fed. Cir. 2015)).

Appellant contends that CGS-ACE Security LLC and CGS-ACE JV are two names that refer to the same entity. Appellant argues that its name evolved over time but that various indicia—including the DUNS number identified in the proposal and SAM registration for CGS-ACE Security LLC, which lists the same DUNS number—show that the two names refer to the same entity. Appellant also contends that, in any event, the contract states that the contractor is CGS-ACE Security LLC because that name is identified as the offeror on the first page of the contract. For these reasons, appellant contends that, regardless of the names used, it is the contractor and was eligible to submit a claim and pursue this appeal.

#### I. Standard of Review and Applicable Law

Summary judgment is appropriate when there are no genuine disputes of material fact and the movant demonstrates it is entitled to judgment as a matter of law. *Carmazzi Global Solutions, Inc. v. Social Security Administration*, CBCA 6264, et al., 19-1 BCA ¶ 37,439, at 181,950. Genuine disputes of material fact exist when a rational finder of fact could resolve an issue in favor of either party and the resolution of that issue would impact the outcome of the case under governing law. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). We must view all inferences in a light most favorable to the non-moving party. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Interpretation of contract language is primarily a matter of law, and disagreements concerning the legal interpretation of contract documents do not create factual disputes that preclude summary judgment. *Edgewater Construction Services, LLC v. Department of Veterans Affairs*, CBCA 7399, 24-1 BCA ¶ 38,506, at 187,154; *South Texas Health System v. Department of Veterans Affairs*, CBCA 6808, 23-1 BCA ¶ 38,420, at 186,707; *Partnership for Response & Recovery, LLP v. Department of Homeland Security*, CBCA 3566, et al., 14-1 BCA ¶ 35,805, at 175,114; see *M.A. Mortenson Co. v. Brownlee*, 363 F.3d 1203, 1205-06 (Fed. Cir. 2004).

Pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018), the Board has jurisdiction to decide appeals brought by contractors from contracting officers' final decisions. *Id.* § 7105(e)(1)(B). A contractor is defined as “a party to a Federal Government contract other than the Federal Government.” *Id.* § 7101(7). Those entities “who are not in privity of contract with the government cannot avail themselves of the CDA’s appeal provisions.” *Winter v. FloorPro, Inc.*, 570 F.3d 1367, 1371 (Fed. Cir. 2009).

In its motion for summary judgment, respondent argues that the undisputed facts in the record show that, as a matter of law, appellant does not have a contract with the

Government and that, therefore, no reviewable claim was submitted. Because this issue has been presented as a motion for summary judgment, we will address it as such.<sup>7</sup>

The parties have extensively briefed the history of the names CGS-ACE Security LLC and CGS-ACE JV, and much of their arguments address whether these names refer to the same or different entities. As discussed, respondent contends that CGS-ACE Security LLC and CGS-ACE JV are two separate business entities and that the Government entered into a contract with the latter, rather than the former; appellant contends that CGS-ACE Security LLC and CGS-ACE JV are two names that refer to the same entity. In the next section, we address the terms of the contract. Because, as discussed below, the contract identifies appellant as the contractor, we need not resolve at this time whether CGS-ACE Security LLC and CGS-ACE JV are the same entity.

## II. The Contract Identifies CGS-ACE Security LLC as the Offeror

Respondent argues that the contract is between DOS and CGS-ACE JV because the proposal accepted by the Government for award identified CGS-ACE JV as the offeror. Although the first page of the contract states that the “NAME AND ADDRESS OF OFFEROR” is CGS-ACE SECURITY LLC, respondent contends that this is merely “contact information” for the actual contractor, CGS-ACE JV. Respondent argues that because the contract incorporated proposal exhibit P, which identifies the offeror as CGS-ACE JV, the contract is between DOS and this entity. Appellant contends that the SF 33, which is the first page of the contract, states that the offeror was CGS-ACE Security LLC, which definitively establishes that appellant is the contractor.

To determine the identity of the parties to the contract, we must first look to the contract itself. See *Agility Logistics Services Company KSC v. Mattis*, 887 F.3d 1143, 1148-49 (Fed. Cir. 2018); *General Dynamics Corp. v. United States*, 47 Fed. Cl. 514, 525 (2000). When interpreting the terms of a contract, we look first to the plain language of the contract. *Foley Co. v. United States*, 11 F.3d 1032, 1034 (Fed. Cir. 1993). Where a contract’s provisions are “clear and unambiguous, they must be given their plain and ordinary meaning,” and we “may not resort to extrinsic evidence to interpret them.” *McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996) (citations omitted). The contract must be considered as a whole and interpreted so as to harmonize and give reasonable meaning to all of its parts. *NVT Technologies, Inc. v. United States*, 370 F.3d

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<sup>7</sup> Had we addressed respondent’s initial motion to dismiss for lack of jurisdiction, the standard for jurisdiction under the CDA for such a motion “requires no more than a non-frivolous allegation of a contract with the government.” *Engage Learning, Inc. v. Salazar*, 660 F.3d 1346, 1353 (Fed. Cir. 2011).

1153, 1159 (Fed. Cir. 2004). An interpretation that gives meaning to all parts of the contract is to be preferred over one that leaves a portion of the contract useless, inexplicable, void, or superfluous. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991).

A. Name of Offeror on SF 33

The first page of the contract is a SF 33, which is a form prescribed by the Federal Acquisition Regulation (FAR) for use in the solicitation and award of negotiated contracts. Exhibit 2 at 1; *see* 48 CFR 53.215-1(c) (2019) (FAR 53.215-1(c)). The SF 33 states that the contract consists of four parts: Part I, the schedule, consisting of sections A through H; Part II, the contract clauses, consisting of section I; Part III, the list of documents, exhibits, and other attachments, consisting of section J; and Part IV, the representations and instructions, consisting of sections K through M. Exhibit 2 at 1.

SF 33 Box 15A is titled: “NAME AND ADDRESS OF OFFEROR.” Because SF 33 is intended for use in both solicitation and awards, the term “offeror” identifies the contractor when the SF 33 is attached to a contract. Box 15A did not have space to enter information; rather, space for this information is provided in a box to the right with the following text: “CONTACT,” “Attn,” and “DUNS.” In the contract sent to the Mr. Khalid, the contracting officer entered this data in Box 15A:

CONTACT:  
CGS-ACE Security LLC  
7389 LEE HWY STE 207  
FALLS CHURCH, VA 22042-1737

Attn:  
[No information]

DUNS:  
117659162

Exhibit 2 at 1.

Respondent does not contend that the term “NAME AND ADDRESS OF OFFEROR” is unclear or ambiguous. Instead, respondent argues that SF 33 Box 15A does not identify the offeror. Respondent’s Motion for Summary Judgment at 12-14. In this regard, respondent contends that the word “CONTACT” means that Box 15A identifies a point of contact for the contractor and not the contractor itself. *Id.* Respondent further argues that the identity of the contractor must be determined by looking to portions of the proposal that are incorporated into the contract, particularly Exhibit P, Offeror Information and/or



Signature Page. *Id.* at 7-10. Based on this interpretation, the Government argues that SF 33 listed CGS-ACE Security LLC solely as the point of contact for CGS-ACE JV, who is the actual offeror identified in the proposal.

Respondent's interpretation of the text in Box 15A is unreasonable. The additional terms within Box 15A—"CONTACT:," "Attn:," and "DUNS:"—must be read in a manner that is consistent with the title of Box 15A, "NAME AND ADDRESS OF OFFEROR." *See NVT Technologies, Inc.*, 370 F.3d at 1159; *Gould, Inc.*, 935 F.2d at 1274. Respondent's interpretation of the additional terms as only requiring contact information, without identifying the actual name and address of the offeror, is inconsistent with the plain meaning of the title of Box 15A. Further, respondent's interpretation renders the text "NAME AND ADDRESS OF OFFEROR" superfluous because Box 15A would not actually identify the name and address of the offeror.

In contrast, interpreting the additional terms as requiring information for the actual offeror is consistent with the title of Box 15A, "NAME AND ADDRESS OF OFFEROR." Thus, the plain and ordinary meaning of "NAME AND ADDRESS OF OFFEROR" can only mean the name of the offeror and the address of the offeror. On this record, the offeror identified in SF 33 is appellant, CGS-ACE Security LLC.

#### B. Conflict Between SF 33 and Exhibit P

While SF 33 Box 15A identifies the name of the contractor as CGS-ACE Security LLC, respondent notes that Exhibit P to the contract, Offeror Information and/or Signature Page, identifies the offeror as CGS-ACE JV. Exhibit P was part of the proposal's price volume and was attached to section J of the contract. Exhibit 2 at 59-60, 123-25. We, thus, address the conflict between the names identified in SF 33 and Exhibit P.

An order of precedence clause applies where the terms of a contract conflict and require resolution that cannot be resolved through other means of contract interpretation. *See Optimum Services, Inc. v. Department of the Interior*, CBCA 4968, 19-1 BCA ¶ 37,383, at 181,738; *Relyant, LLC*, ASBCA 58172, 16-1 BCA ¶ 36,228, at 176,749. Here, given the direct and irreconcilable conflict between the differing names of the offeror within the contract, resolution through the contract's order of precedence clause is required.

The contract incorporated by reference FAR 52.215-8, Order of Precedence - Uniform Contract Format (Oct 1997).<sup>8</sup> Exhibit 2 at 46. This clause states:

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<sup>8</sup> The contract also included a second order of precedence clause, in section C.15, which provided that "[t]he final version of the contractor's technical proposal is

## Order of Precedence-Uniform Contract Format (Oct 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

48 CFR 52.215-8.

As discussed, SF 33 is in section A of the contract, which is designated by that form as part I, the contract schedule. FAR 52.215-8 states that the schedule is first in order of precedence. Exhibit P to the proposal's price volume is attached to section J of the contract. Form SF 33 states that section J of the contract is within part III of the contract, "LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS." FAR 52.215-8 states that "[o]ther documents, exhibits, and attachments" are fourth in the order of precedence.

On this record, the contract's order of precedence clause establishes that the name of the contractor set forth in section A (CGS-ACE Security LLC) takes precedence over the

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incorporated into this Section C by reference." Exhibit 2 at 21. This clause also stated that "any and all conflicts between the Contractor's incorporated technical proposal and the contract itself shall be resolved by referring to the contract language in the awarded contract as the presiding authority." *Id.* Exhibit P, however, was part of the proposal's price volume and was, therefore, not part of the proposal's technical volume incorporated through contract clause C.15. Rather, as discussed above, Exhibit P to the price volume was attached as an exhibit to section J of the contract.

name of the contractor set forth in section J (CGS-ACE JV).<sup>9</sup> The plain language of the contract, therefore, establishes that CGS-ACE Security LLC is the contractor.

C. Other Arguments

Although the plain language of the contract states that the contractor is CGS-ACE Security LLC, respondent argues that, consistent with guidance from bid protest decisions addressing procurement law, the contract must nonetheless be deemed awarded to CGS-ACE JV because that entity's name is on the proposal. As discussed, contract provisions that are clear and unambiguous must be given their plain and ordinary meaning without consideration of extrinsic evidence. *McAbee Construction, Inc.*, 97 F.3d at 1434-35. To the extent respondent argues that this well-established principle of contract interpretation should be disregarded, its argument has no merit.

Respondent notes that decisions by the Government Accountability Office (GAO) state that the Government may only award a contract to an entity that submitted a proposal. In essence, respondent contends that the award could not have been to CGS-ACE Security LLC because such an award would have been improper as a matter of procurement law.

When evaluating proposals and awarding contracts, agencies must generally award the contract to the entity that submitted a proposal, and ambiguities as to the identity of the offeror may provide a basis to reject a proposal. See *DynCorp International, LLC*, B-418594, et al., 2020 CPD ¶ 221 (June 23, 2020); *Raytheon Co.*, B-409651, et al., 2014 CPD ¶ 207 (July 9, 2014); *W.B. Construction & Sons, Inc.*, B-405874, et al., 2011 CPD ¶ 282 (Dec. 16, 2011). Further, the award of a contract to an entity different than the one that submitted a proposal may provide a basis to sustain the protest. See *W.B. Construction*, 2011 CPD ¶ 282.

These bid protest decisions, however, do not state that the contract between the Government and the incorrect entity is void or unenforceable in a manner that affects the

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<sup>9</sup> Appellant also contends that respondent's use of the name CGS-ACE Security LLC in SF 33 is consistent with the twenty-four modifications to the contract, each of which contains SF 30 and identifies the "NAME AND ADDRESS OF CONTRACTOR" as "CGS-ACE Security LLC DBA: CGS-ACE SECURITY LLC." Exhibits 40-63. Although our decision is based on the plain language of the contract, we note that the contract modifications also use the name of appellant. We also note that respondent does not claim that the use of the name CGS-ACE Security LLC in the contract or modifications was a mistake.

rights of that contractor in the awarded contract.<sup>10</sup> Rather, numerous board decisions concern termination claims submitted by appellants whose contracts were terminated for convenience following a bid protest.<sup>11</sup> *E.g.*, *Sage Acquisitions LLC, v. Department of Housing and Urban Development*, CBCA 7319, 23-1 BCA ¶ 38,315, *aff'd*, 119 F.4th 973 (Fed. Cir. 2024); *Optimum Services, Inc. v. Department of the Interior*, CBCA 4968, 16-1 BCA ¶ 36,357; *Bannum, Inc. v. United States*, 151 Fed. Cl. 755 (2021); *4H Construction Corp.*, ASBCA 59977, 19-1 BCA ¶ 37,317; *Phoenix Data Solutions LLC f/k/a Aetna Government Health Plans*, ASBCA 60207, 18-1 BCA ¶ 37,165.

Respondent does not identify any contract appeal decisions which state that as a result of a bid protest, an improperly awarded contract is void and that the awardee lacks the ability to submit a contract claim. Moreover, courts generally disfavor voiding a completed or substantially performed contract.<sup>12</sup> *See American Telephone & Telegraph Co. v. United States*, 177 F.3d 1368, 1376 (Fed. Cir. 1999) (en banc) (“When a contract or a provision thereof is in violation of law but has been fully performed, the courts have variously sustained the contract, reformed it to correct the illegal term, or allowed recovery under an implied contract theory; the courts have not, however, simply declared the contract void ab initio.”).

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<sup>10</sup> Respondent also contends that CGS-ACE Security LLC is not a joint venture, and, therefore, could not have performed the contract without violating the prohibition on subcontracting the security requirements. To the extent respondent argues that CGS-ACE Security LLC is not the contractor because such a conclusion would indicate a breach of the contract, we note that respondent has not asserted a claim against the contractor alleging defective performance. Our decision here is based solely on the plain language of the contract.

<sup>11</sup> Respondent also argues that GAO’s decision in *Prak Industries LLC*, B-422517, 2024 CPD ¶ 165, provides that the entirety of the contract, rather than the name on an SF 33 or contract modification form, determines the identity of the contractor. GAO’s bid protest decision concerned the reasonableness of a procuring agency’s evaluation of an offeror’s proposal for purposes of award, including the agency’s obligation to address errors or inconsistencies in the proposal. The decision in *Prak Industries LLC* does not concern the interpretation of the terms of a contract executed between a contractor and the Government and is not relevant to this appeal.

<sup>12</sup> The record shows that contract performance was completed as of May 31, 2024, as reflected in respondent’s exercise of the option to extend services under FAR 52.217-8 and the lack of further exercises of options. *See Exhibit 62 at 1.*

In sum, respondent does not establish that a contract must be deemed awarded to the entity whose name is on the proposal, regardless of the plain language of the contract itself. Thus, even if the award of a contract to CGS-ACE Security LLC was found to be improper as a matter of law, such a finding would not establish that DOS did not enter into a contract with CGS-ACE Security LLC.

### III. Conclusion

The plain language of the contract shows that the contract is between DOS and CGS-ACE Security LLC. Even if there is merit to respondent's argument that CGS-ACE Security LLC and CGS-ACE JV are different entities, there is no question of material fact that the Government entered into a contract with the former entity. Further, even if the Government improperly awarded a contract to a different entity than the one that submitted the proposal, respondent does not demonstrate that this potential procurement error bars the actual contractor from submitting its claim under the CDA and pursuing this appeal. For these reasons, respondent is not entitled to judgment as a matter of law.<sup>13</sup>

### Decision

For the foregoing reasons, we **DENY** respondent's motion for summary judgment. The Board will schedule further proceedings by separate order.

Jonathan L. Kang  
JONATHAN L. KANG  
Board Judge

We concur:

H. Chuck Kullberg  
H. CHUCK KULLBERG  
Board Judge

Jonathan D. Zischkau  
JONATHAN D. ZISCHKAU  
Board Judge

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<sup>13</sup> The parties each raise other collateral arguments. Although we do not address every argument, we have reviewed them all and find that none provides a basis for a different conclusion in this decision.