UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: April 4, 2025

CBCA 7451

QUALITY TRUST, INC.,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Lawrence M. Ruiz, President of Quality Trust, Inc., Junction City, KS, appearing for Appellant.

Rachel Grabenstein, Office of the Solicitor, Department of the Interior, Albuquerque, NM, counsel for Respondent.

Before Board Judges **RUSSELL**, **SULLIVAN**, and **CHADWICK**.

SULLIVAN, Board Judge.

Quality Trust, Inc. (QTI) appealed the decision of a contracting officer for the Department of the Interior (DOI or respondent) denying QTI's claim for lack of support. In a decision issued in March 2024 on DOI's motion to dismiss in part for lack of jurisdiction, we found that QTI claimed damages of more than $481,000 for a period of standby. DOI subsequently filed a motion for summary judgment, asserting that QTI has not provided any support for its claim and cannot meet the required elements of the *Eichleay* formula (as set forth in *Eichleay Corp.*, ASBCA 5183, 60-2 BCA ¶ 2688, *aff'd on reconsideration*, 61-1 BCA ¶ 2894). We find that QTI cannot receive an equitable adjustment for a suspension of work and has not proven entitlement to damages calculated with the *Eichleay* formula.

Statement of Undisputed Facts

I. Claim to the Contracting Officer

In September 2020, DOI entered into a contract with QTI for bridge and road repair. Appeal File, Exhibit 7 at 2-4.[1] The period of performance was September 23, 2020, to February 26, 2021. *Id*. at 4. The contract incorporated Federal Acquisition Regulation (FAR) clause 52.242-14, Suspension of Work (APR 1984) (48 CFR 52.242-14 (2020)). Exhibit 7 at 81. That clause stipulates that a contractor shall receive an economic adjustment for any increase in contract performance costs "necessarily caused by the unreasonable suspension, delay, or interruption" of work by the contracting officer. To ensure that nesting birds were not disturbed, the contract prohibited QTI from performing masonry work on the bridge to be repaired between March 15 and September 1. Exhibit 7 at 75.

There are two suspensions of work documented in the appeal file. On December 28, 2020, the contracting officer issued a unilateral modification, partially suspending work to address QTI's mistake in price. Exhibit 33 at 2 (modification 1); *see also* Exhibits 25, 28 at 2. DOI lifted the suspension on January 21, 2021. Exhibit 42 at 2. On February 4, 2021, the contracting officer issued another suspension and a cure notice, directing QTI to address several failures and deficiencies in its performance. Exhibit 53 (modification 3). After receiving several additional cure notices, QTI made the necessary adjustments, and the contracting officer lifted this second suspension on March 30, 2021. Exhibit 70 at 3 (modification 4). In the modification lifting the second suspension, the contracting officer extended the completion date to September 30, 2021. *Id*.

In April 2021, the parties executed a bilateral modification to address "a mutual mistake in the contract price after award," adding approximately $52,000 to the contract price. Exhibit 76 at 2 (modification 5). On January 4, 2022, the contracting officer issued two unilateral modifications. The first extended the contract completion dated to January 31, 2022. Exhibit 121 at 2 (modification 8). The second partially terminated work for convenience, listing five areas of terminated contract work. *Id*. at 4-11 (modification 9).

By letter dated January 10, 2022, QTI submitted a "time and cost modification request," seeking payment of $2000 per day for the period from March through November 2021, during which QTI alleged it was on standby due to "latent conditions and changes" in a project that was "not classified correctly." Exhibit 129 at 3.

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[1] All exhibits are found in the appeal file unless otherwise indicated.

In April 2022, QTI submitted a claim to the contracting officer pursuant to the contract's Disputes clause, FAR 52.233-1, seeking payment of $481,109.75. Exhibit 146 at 3-8. QTI did not explain how it arrived at its claim amount or identify what "[l]ost [a]djustment expenses" remained to be incurred. *See id.* at 3. QTI certified that the supporting data it provided "are accurate and complete" and that the "amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable." *Id*.

On May 23, 2022, the contracting officer requested via email that QTI clarify the amount of its claim and provide documentation showing "how [QTI] arrived at the amount claimed and explain to the Government why [QTI is] entitled to the sum amount claimed." Exhibit 148 at 1. In its email reply the same day, QTI described a series of purported problems on the contract:

> [T]his contract is royally messed up in many specific areas. Let me reiterate[.] When we had the problems on the bridge, a time and cost modification was sent to you, of which you never responded to over a year ago[.] QTI had taken into account that we must be ready and willing to [mobilize] and [demobilize] two more times[,] [w]hich alone would easily add another $100,000.00[.] Because of all the changes, and a contract that never said, we were working on a Department of Natural Resources (DNR) project was very deceiving from the specifications and drawings. Please note: the project was out of scope and full of differing site conditions and latent conditions to mention a few. The more I think about this . . . QTI could easily justify the $481,109.75.

Exhibit 150 at 2. QTI also stated that "we estimated $2,000.00 a day based on [this contract] being our only project." *Id*. QTI also submitted a new additional payment request for $75,840.25. Exhibit 149 at 3. QTI complained about a "unilateral Partial Termination . . . due to latent and differing site conditions" and that modification 5 "was never honored in good faith in the Amount of **$51,921.00** plus interest and penalties." *Id.* at 3.

The following day, the contracting officer and QTI exchanged a series of emails seeking to clarify the basis of QTI's claim and the payment request for $75,840.25. *See* Exhibits 151, 152. In its replies, QTI asserted that the nearly $52,000 modification to the contract value (modification 5) formed the basis of its claim but did not explain how. *See* Exhibit 152. On June 8, 2022, QTI sent the contracting officer three emails, the last of which offered to "justify the $481,109.75." Exhibit 153 at 4. QTI asserted that it could support its claim with the use of the *Eichleay* formula. *See id.* ("For the larger amount[,] QTI will claim under the EIKLAY [sic] Formula.").

On June 14, 2022, the contracting officer denied the claim, concluding that QTI had not provided support for its claim. Exhibit 154 at 4.

II. Proceedings Before the Board

In July 2022, QTI filed this appeal. QTI alleged, in part, that its work under the contract was on standby due to project mismanagement by DOI. Complaint ¶ 8. After QTI submitted its complaint, DOI moved to partially dismiss the appeal for lack of jurisdiction because several of the allegations raised in the complaint were not presented to the contracting officer. QTI responded to the motion and provided further explanation of some, but not all, of the paragraphs in its complaint. QTI failed to explain the basis of its claim despite the Board's repeated requests for it to do so. In the Board's March 2024 decision, *Quality Trust, Inc. v. Department of Interior*, CBCA 7451, 24-1 BCA ¶ 38,548, at 187,363, we held—based upon the correspondence between the contracting officer and QTI regarding the claim—that QTI's claim was one for a period of standby in an amount of over $481,000. In the decision, the Board identified the paragraphs that were tied to QTI's claim of constructive suspension and decreed that further proceedings would be limited to this claim.

Following its March 2024 decision, the Board set a discovery schedule. After repeated delays, QTI responded to DOI's interrogatories. The Board set a schedule for the filing of dispositive motions following the close of discovery. After additional delays by QTI, DOI filed its motion for summary judgment in November 2024.

The Board set a deadline for QTI to respond to DOI's motion for summary judgment. Following requests from QTI and conferences with the parties, this deadline was extended five times. Several of these extension orders warned QTI that the Board would decide DOI's motion without QTI's response if QTI failed to respond by the deadline. The final deadline for QTI's response was March 28, 2025. The Board did not receive a response from QTI.

Discussion

Standard for Summary Judgment

Summary judgment is appropriate when the moving party demonstrates that there is no genuine issue of fact, entitling the movant to judgment as a matter of law. Rule 8(f) (48 CFR 6101.8(f) (2024)); *see* Fed. R. Civ. P. 56(a). "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." *Facility Defense Consultants, Inc. v. Department of Veterans Affairs*, CBCA 5841, et al., 23-1 BCA ¶ 38,393, at 186,550 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). We

review all inferences in a light most favorable to the non-moving party. *Id.* (citing *Matsushita Electric Industrial Co. v. Zenith Radio Corp*., 475 U.S. 574, 599 (1986)). Movants must file a statement of undisputed material facts with their motions for summary judgment. Rule 8(f)(1). The opposing party is then required to submit a statement of genuine issues, referencing specific facts mentioned in the moving party's statement of undisputed material facts, to show genuine issues with these facts in dispute by citing to exhibits, admissions, and/or evidence filed with the opposition. Rule 8(f)(2). "[M]ere denials or conclusory statements are not sufficient." *United Facility Services Corp. v. General Services Administration*, CBCA 7618, 24-1 BCA ¶ 38,535, at 187,316 (quoting *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390-91 (Fed. Cir. 1987)) (internal quotations omitted).

A motion for summary judgment, even when unopposed, still requires this Board to determine that the undisputed material facts entitle the moving party to judgment as a matter of law. *INQEM LLC v. Department of Homeland Security*, CBCA 7645, 23-1 BCA ¶ 38,428, at 186,771. In doing so, this Board may "declar[e] as uncontroverted the factual assertions in the moving party's statement of undisputed material facts, particularly when the party that failed to respond was previously warned of the consequences of not responding." *Id.*; *see also Carmazzi Global Solutions, Inc. v. Social Security Administration*, CBCA 6264, et al., 20-1 BCA ¶ 37,670, at 182,882, *motion to vacate denied*, 21-1 BCA ¶ 37,776, *appeal dismissed*, No. 2021-2035, 2022 WL 17972180 (Fed. Cir. Dec. 28, 2022). If the non-moving party does not respond or seek more time to respond, this Board need not extend the deadline and may rule on the undisputed facts. *Carmazzi Global Solutions, Inc.*, 20-1 BCA at 182,882-83; *Magwood Services, Inc. v. General Services Administration*, CBCA 5588, 18-1 BCA ¶ 37,057, at 180,395-96.

Here, QTI failed to respond to DOI's motion despite numerous extensions. The Board warned that it would decide the motion in the absence of a response. We deem DOI's statement of undisputed facts as uncontested and turn to the evaluation of whether summary judgment is appropriate in light of these facts.

Suspension Claim

The Board previously determined that QTI advanced a constructive suspension claim. *Quality Trust, Inc.*, 24-1 BCA at 187,363. "Constructive suspension occurs when work is stopped absent an express order by the contracting officer and the [G]overnment is found to be responsible for the work stoppage." *P.R. Burke Corp. v. United States*, 277 F.3d 1346, 1359 (Fed. Cir. 2002) (citing John Cibinic, Jr., & Ralph C. Nash, Jr., *Administration of Government Contracts* 589-90 (3d ed.1995)). "A constructive suspension will be found on the same elements and has the same effect and consequences as an actual suspension."

J.R. Pope. Inc., DOTCAB 78-55, 80-2 BCA ¶ 14,562, at 71,777 n.10 (citing *Hilltop Electric Construction Co., Inc.*, DOTCAB 76-47, 77-2 BCA ¶ 12,676; *Fruehauf Corp. v. United States*, 587 F.2d 486 (Ct. Cl. 1978); *Urban Plumbing & Heating Co. v. United States*, 408 F.2d 382 (Ct. Cl. 1969)). To recover under the Suspension of Work clause, the contractor needs to prove four elements: "(1) [the] contract performance was delayed; (2) the Government directly caused the delay; (3) the delay was for an unreasonable period of time; and (4) the delay injured the contractor in the form of additional expense or loss." *BCPeabody Construction Services, Inc. v. Department of Veterans Affairs*, CBCA 5410, 18-1 BCA ¶ 37,013, at 180,255 (citing *Triax-Pacific v. Stone*, 958 F.2d 351, 353 (Fed. Cir. 1992); FAR 52.242-14). "The Government's actions [must be] the *sole* proximate cause for the contractor's additional loss, and the contractor would not have been delayed for any other reason during that period." *Lusk Mechanical Contractors, Inc. v. General Services Administration*, CBCA 7759, 24-1 BCA ¶ 38,569, at 187,462 (quoting *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 50, 07-1 BCA ¶ 33,525, at 166,103) (internal quotations omitted); *see also* FAR 52.242-14(b).

In briefing, DOI acknowledges that there were two suspensions but asserts that these suspensions were caused by QTI's errors in its bid and performance issues on the contract. As explained, the prohibition on masonry work from March to September was not a suspension of work because QTI agreed to this limitation at the outset of the contract. *See, e.g.*, FAR 52.242-14(b); *Pew Forest Products v. United States*, 105 Fed. Cl. 59, 67 (2012). Because there is no genuine dispute of the fact that DOI was not the sole cause of any delay, we find that the suspensions are not compensable. *Magwood Services*, 18-1 BCA at 180,396.

Even if the suspensions had been DOI's fault, QTI cannot recover because the suspension periods were reasonable. An equitable adjustment under a Suspension of Work clause is only possible "when the [G]overnment suspends work for an unreasonable period of time, thereby delaying work." *Lusk Mechanical*, 24-1 BCA at 187,463 (quoting *Granite Construction Co.*, ASBCA 62281, 23-1 BCA ¶ 38,459, at 186,934) (internal quotations omitted). "[T]he word unreasonable which appears twice in the Suspension of Work clause refers to the duration of the suspension and the delay in the work caused thereby and does not refer to the Government's motivation or purpose in ordering the suspension." *BCPeabody Construction Services, Inc.*, 18-1 BCA at 180,256 (quoting *T.C. Bateson Construction Co.*, ASBCA 5492, 60-2 BCA ¶ 2815, at 14,545) (internal quotations omitted). Neither of the two suspensions ordered here was for an unreasonable period of time. The first suspension, a partial suspension for less than a month, was a reasonable period of time to address the errors in QTI's bid. The second suspension, from February 2021 to March 2021, was similarly reasonable as it was dependent on QTI's ability to remedy problems identified in the cure notices.

Eichleay Damages

DOI also argues that QTI may not recover damages calculated using the *Eichleay* formula. "The *Eichleay* formula is used to calculate the amount of unabsorbed home office overhead a contractor can recover when the [G]overnment suspends or delays work on a contract for an indefinite period." *P.J. Dick Inc. v. Principi*, 324 F.3d 1364, 1370 (Fed. Cir. 2003) (citing *Melka Marine, Inc. v. United States*, 187 F.3d 1370, 1375 (Fed. Cir.1999)). To establish entitlement to *Eichleay* damages, the contractor must show three elements: (1) "there must have been a government-caused delay of uncertain duration;" (2) "the delay extended the original time for performance or that, even though the contract was finished within the required time period, the contractor incurred additional costs because he had planned to finish earlier;" and (3) "the contractor must have been on standby and unable to take on other work during the delay." *Nicon, Inc. v. United States*, 331 F.3d 878, 883 (Fed. Cir. 2003) (internal citations omitted). Importantly, in claims for *Eichleay* damages, similar to a suspension of work claim, the alleged government-caused delay cannot be "concurrent with a delay caused by the contractor or some other reason." *P.J. Dick*, 324 F.3d at 1370 (citing *Sauer Inc. v. Danzig*, 224 F.3d 1340, 1347-48 (Fed. Cir. 2000)).

QTI's claim for *Eichleay* damages fails because there is no period of delay that is solely the agency's fault. QTI points to the period of March through November 2021 as a period it was on standby at the fault of DOI. Work was suspended during most of this period because of restrictions for bird nesting. QTI agreed to this restriction at the outset of the contract. QTI has not provided any other evidence of DOI-caused standby.

Decision

DOI's motion for summary judgment is granted. The appeal is **DENIED**.

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

We concur:

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge