UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT GRANTED;
APPELLANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT DENIED:
December 20, 2022

CBCA 6795

GRAND STRATEGY, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Gaëtan Gerville-Réache and Adam D. Bruski of Warner Norcross + Judd LLP, Grand Rapids, MI, counsel for Appellant.

Francis P. Gainer and Adrienne Z. Schwartz, Office of the General Counsel, Department of Veterans Affairs, Washington, DC; and Jennifer Claypool, Office of the General Counsel, Department of Veterans Affairs, Hines, IL, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **GOODMAN**, and **O'ROURKE**.

O'ROURKE, Board Judge.

Respondent and appellant are parties to a national requirements contract for towels. The contract includes the Order Limitations clause from the Federal Acquisition Regulation (FAR) which specifies minimum and maximum order quantities. The parties disagree on whether the Government was required to purchase towels under the contract when an order exceeded the specified maximum quantity of 100 towels. To resolve the dispute, the parties filed cross-motions for partial summary judgment, seeking the Board's interpretation of the

clause. Because we find that the clause relieves the Government of its obligation to purchase towels from appellant when the order exceeds 100 towels, we grant respondent's motion and deny appellant's motion.

Background

In September 2013, the Department of Veterans Affairs (VA or agency) entered into a requirements contract with Grand Strategy, LLC (Grand Strategy) for the supply of towels (VA797N-13-C-0010) to VA facilities. The contract included FAR clause 52.216-21(c), Requirements (48 CFR 52.216-21(c) (2013)). The period of performance consisted of one base year and four option years. While the record includes evidence of performance during the first two option years, the period of performance is a matter under dispute. *See Grand Strategy, LLC v. Department of Veterans Affairs*, CBCA 6795, 21-1 BCA ¶ 37,895, at 184,039 (finding that a dispute of material fact regarding which option years were exercised precluded summary judgment on the question of the VA's obligation to continue ordering from appellant).

On October 31, 2019, Grand Strategy submitted a certified claim to the VA contracting officer alleging that the VA breached the terms of its requirements contract with Grand Strategy by failing to order from Grand Strategy all of the towels that the VA required. The VA denied any breach, maintaining that its ordering activities were consistent with the terms of the Order Limitations clause, FAR 52.216-19, which stated:

> (a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than one dozen (12), the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.
>
> (b) Maximum order. The Contractor is not obligated to honor--
>
> (1) Any order for a single item in excess of 100;
>
> (2) Any order for a combination of items in excess of 100; or
>
> (3) A series of orders from the same ordering office within 30 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.
>
> (c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the

> Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.
>
> (d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 2 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

Grand Strategy appealed the denial of its claim to the Board. During the discovery phase of the appeal, the parties worked cooperatively to identify which orders, if any, may be relevant to Grand Strategy's claim. However, their efforts were hindered by a dispute over the correct interpretation of the Order Limitations clause. Specifically, the parties disagree over whether the VA was required to place orders with Grand Strategy when an order exceeded the maximum order limitation of 100 towels. Grand Strategy argues that the clause requires the VA to use the contract for orders in excess of the maximum, whereas the VA argues that the clause permits the VA to place orders in excess of the maximum either with Grand Strategy or with a different supplier. The parties filed cross-motions for partial summary judgment, seeking the Board's interpretation of paragraph (c) of the clause. The Board held oral argument on the motions.

Discussion

The parties seek a resolution from the Board on the interpretation of the Order Limitations clause, a purely legal question of contract interpretation that may be resolved by summary judgment. *Varilease Technology Group, Inc. v. United States*, 289 F.3d 795, 798 (Fed. Cir. 2002) (citing *Textron Defense Systems v. Widnall*, 143 F.3d 1465, 1468 (Fed. Cir. 1998)); *P.J. Maffei Building Wrecking Corp. v. United States*, 732 F.2d 913, 916 (Fed. Cir. 1988). We presume familiarity with the standard for summary judgment articulated in *Grand Strategy, LLC*, CBCA 6795, 21-1 BCA ¶ 37,895.

The language at issue is contained in paragraph (c) of the clause, which states: "the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section." This provision defined the parties' obligations under the contract when the Government had a requirement in excess of the maximum order of 100 towels. The VA argues that paragraph (c) relieved the agency of its obligation to order towels from Grand Strategy for an order in excess of 100 towels. Grand Strategy contends that "paragraph (c) only clarifies that the VA

has no obligation to break up its order into smaller parts," as evidenced by the phrase "the Government is not required to order *a part of* any one requirement from the Contractor if that requirement exceeds the maximum-order limitations." (Emphasis added). Grand Strategy also argues that the VA's interpretation renders the contract illusory, reducing it to "a ploy to secure volume-based pricing without committing the VA to purchase any volume." We disagree with both of Grand Strategy's contentions.

The plain language of paragraph (c) is straightforward—when an order exceeds the maximum-order limitations in paragraph (b), the VA is not required to procure part of that order from Grand Strategy. For example, if the VA needed 500 towels, the VA would not be obligated to order part of that requirement, such as 100 towels, from Grand Strategy. If, however, the agency made such a request to Grand Strategy (an order for 500 towels), the clause required Grand Strategy to fill it *unless* Grand Strategy took certain steps to obtain relief from the requirement. Our interpretation is consistent with *Dixie Construction Co.*, ASBCA 56880, 10-1 BCA ¶ 34,422, at 169,918-19, cited by respondent, which also interpreted the maximum order threshold of the Order Limitations clause. *See also R&G Food Services, Inc. d/b/a/ Port-a-Pit Catering v. Department of Agriculture*, CBCA 3487, 16-1 BCA ¶ 36,559, at 178,803-04 (referencing the Government's obligations under the Order Limitations clause in dictum).

Despite the clear language of the provision, Grand Strategy maintains that since the phrase "a part of any one requirement" means "some quantity less than the whole requirement," the only proper interpretation of paragraph (c) is that "the VA has no obligation to order an amount that is less than its whole requirement." To contend otherwise, Grand Strategy argues, would make the phrase "a part of" meaningless. This is an unreasonable interpretation as it is inconsistent with the plain language of paragraph (c) and cannot succeed in creating an ambiguity where none exists. "It has been long recognized that where a contract provision is clear, '[t]he rules of contract construction should not be permitted to create an ambiguity where none exists or change or twist the plain meaning of a simple agreement.'" *Au' Authum Ki, Inc. v. Department of Energy*, CBCA 2505, 14-1 BCA ¶ 35,727, at 174,890-91 (quoting *National Housing Group, Inc. v. Department of Housing & Urban Development*, CBCA 340, et al., 09-1 BCA ¶ 34,043, at 168,377). "A contract may be so clear as not to require interpretation, but a mere lack of clarity on casual reading is not the criterion for determining whether a contract is afflicted with ambiguity." *Bank of America, National Ass'n v. Department of Housing & Urban Development*, CBCA 5571, 18-1 BCA ¶ 36,927, at 179,890 (2017) (quoting *McCann v. McGlynn Lumber Co.*, 34 S.E.2d 839, 845 (Ga. 1945)).

Since the provisions in paragraph (b) of the clause already address the notion of breaking up orders into smaller parts, adopting Grand Strategy's interpretation would violate

these same rules by rendering paragraph (b) redundant. "[A]n interpretation which gives a reasonable meaning to all parts of an instrument will be preferred to one which leaves a portion of it useless, inexplicable, inoperative, void[,] insignificant, meaningless or superfluous." *Wu & Associates, Inc. v. General Services Administration*, CBCA 6760, 21-1 BCA ¶ 37,965, at 184,384 (quoting *Jane Mobley Associates, Inc. v. General Services Administration*, CBCA 2878, 16-1 BCA ¶ 36,285).

In the instant case, the fact that the VA routinely placed orders with Grand Strategy that exceeded the maximum, and Grand Strategy filled them, does not obligate the VA to continue to do so, nor does it bolster Grand Strategy's argument. Rather, it is evidence that the parties complied with the clause as written: "[T]he Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 2 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons."

Finally, we reject Grand Strategy's argument that interpreting the clause consistent with the VA's position renders the contract illusory. Contracts deemed illusory promise nothing. They contain neither mandatory minimum purchase requirements, such as with an indefinite-delivery, indefinite-quantity contract, nor the order limitations typically found in requirements contracts. Without any mutuality of obligation and words of exclusivity, the parties are free to obtain and supply requirements as they deem appropriate. *Sylvan B. Orr v. Department of Agriculture*, CBCA 5299, 16-1 BCA ¶ 36,522, at 177,925 (quoting *Ridge Runner Forestry v. Veneman*, 287 F.3d 1058, 1061-62 (Fed. Cir. 2002)). Here, the contract's clauses required the VA to place orders exclusively with Grand Strategy when those orders were for quantities between 12 and 100. These facts belie Grand Strategy's assertion that the VA's interpretation of the clause creates an illusory contract. On the contrary, we find the VA's position consistent with the contract's terms and with our precedent.

Decision

The VA's motion for partial summary judgment is **GRANTED**. Grand Strategy's motion for partial summary judgment is **DENIED**.

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge

We concur:

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge