



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: April 18, 2024

CBCA 7684

ENFIELD ENTERPRISES, INC.,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Casey J. McKinnon of Cohen Seglias Pallas Greenhall & Furman PC, Washington, DC, counsel for Appellant.

Gabriel D. Soll, Office of Acquisition and Procurement Law, United States Coast Guard, Department of Homeland Security, Washington, DC; and Brad Blevins, Legal Service Command, United States Coast Guard, Department of Homeland Security, Norfolk, VA, counsel for Respondent.

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

**SULLIVAN**, Board Judge.

Enfield Enterprises, Inc. (Enfield) appealed the denial of its claim for costs arising from weather delays that it experienced on its contract with the United States Coast Guard (USCG), following delays and modifications to the contract to address various contract issues. We find that Enfield's claim is barred by the language of a release and deny the claim.

## Statement of Facts

### I. Contract Terms and Performance

In May 2019, USCG awarded a task order to Enfield for the renovation of the Coast Guard Station in Grand Isle, Louisiana, at a cost of approximately \$2 million. Appeal File, Exhibit 2 at 3-4.<sup>1</sup> The task order set May 5, 2020, as the date for completion. *Id.* at 3.

The parties modified the contract four times. The first modification, executed on April 29, 2020, increased the contract price by \$351,949 and the time for performance by sixty days, to July 3, 2020. Exhibit 7 at 1. The modification required Enfield to perform additional abatement work for asbestos and lead-based paint. *Id.* The modification contained no release language.

The second modification, executed on May 30, 2020, increased the contract price by \$889,564.45 and the time for performance by seventy days, to September 11, 2020. Exhibit 12 at 2. The modification was necessary to address additional work to the external insulation, a mechanical room, and an additional room. *Id.*; Exhibit 10 at 2. The modification contained no release language.

The third modification, executed on September 2, 2020, extended the time for performance by fifty-one days, to November 1, 2020, but did not increase the contract price. Exhibit 15 at 1. The modification was necessary to address the effects of the COVID-19 pandemic and Tropical Storm Cristobal. *Id.* The modification contained no release language.

The fourth modification, executed on March 2, 2021, increased the contract price by \$554,723.94 and extended the time for performance by 123 days, sixty days to perform the additional work and sixty-three days to account for USCG's delay in processing the modification, to April 27, 2021. Exhibit 19 at 1-2. The modification was necessary to add scope for roof and HVAC repairs and mold remediation following hurricanes and tropical storms. *Id.* at 1; *see* Exhibit 18 (Enfield's proposal, dated December 10, 2020). The modification included a broad release: "In consideration of this time extension, the Contractor releases the Government from [sic] any and all claims and liability under or by virtue of this contract or any modification." *Id.* at 2.

On April 14, 2021, USCG issued a certificate of beneficial occupancy for the project. Exhibit 21.

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<sup>1</sup> All exhibits are found in the appeal file, unless otherwise noted.

## II. Enfield's Claim

In August 2022, Enfield submitted a claim to the contracting officer, seeking payment of \$186,152.88 for delays due to government changes and unforeseeable weather conditions. Exhibit 22. Enfield claimed thirty-nine days of delay arising from six hurricanes and tropical storms that occurred between June 4 and November 3, 2020. *Id.* at 9. Enfield alleged that because of Government errors and omissions that required modifications to the contract, its construction work was “pushed . . . into [this period of] adverse weather.” *Id.* at 3-4.

The contracting officer denied the claim in December 2022, and Enfield timely appealed the denial. The parties agreed to submit the appeal for decision on the record pursuant to Board Rule 19. 48 CFR 6101.19 (2023).

### Discussion

Enfield asserts that it is entitled to the days of weather delay because, but for the other problems experienced on the contract, which were the source of modifications, it would have completed the contract by the original contract completion date of May 5, well before the hurricanes and tropical storms that caused its delays. Enfield asserts that the Government-caused delays constituted either a constructive suspension or a cardinal change. Enfield relies upon a line of cases that provide that government agencies can be liable for additional costs incurred if performance was pushed to a period of adverse weather because of other contract issues for which the agency is responsible. *See, e.g., Labco Construction, Inc.*, AGBCA 90-115-1, 94-2 BCA ¶ 26,910, at 134,001; *DTC Engineers & Constructors, LLC*, ASBCA 57614, 12-1 BCA ¶ 34,967, at 171,898. The problem with Enfield's claim is that it is foreclosed by the release to which it agreed in modification four.

“A release executed by a contractor will normally bar any existing claims except those reserved within the terms of the release.” *Siska Construction Co.*, VABCA 3470, 92-1 BCA ¶ 24,578, at 122,607 (1991), *motion for reconsideration denied*, 92-1 BCA ¶ 24,729. The contractor bears the burden to identify and specify claims to be reserved at the time a release is drafted “[s]ince the information regarding any unresolved claims against the government lies with the contractor.” *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1394 (Fed. Cir. 1987). “Absent special, limited, circumstances, a general release bars claims based upon events occurring prior to the date of the release.” *Riennes Construction Co.*, IBCA 3572-96, et al., 98-2 BCA ¶ 29,821, at 147,658. Special circumstances include “the Government's postrelease consideration of a claim, economic duress, fraud, mutual mistake, or obvious unilateral mistake by the contractor.” *Id.* (citing *Mingus*, 812 F.2d at 1395).

The release in modification four is very broad—Enfield agreed to release USCG from “any and all claims and liability under or by virtue of this contract or any modification.”

This language bars Enfield's delay claim because that claim arises from the Government's errors which led to the modifications to the contract that pushed its performance past the May 5 completion date. The release contained no exceptions, and Enfield has not alleged any circumstances (e.g., mutual mistake) that would allow the Board to consider the claim despite the release. Moreover, all of the facts underlying the claim had occurred by the date that Enfield signed the release. For these reasons, Enfield's claim is foreclosed by the release.<sup>2</sup>

Enfield argues that the release does not foreclose its claim because there is no mention of weather delays in the text of the release. Enfield's claim is not based upon weather delays. Its claim arises from the other modifications to the contract, which, according to Enfield, pushed its work into the period of adverse weather. Because Enfield agreed to release all claims arising from those modifications, it cannot pursue its claim for costs incurred as the result of adverse weather.

#### Decision

The appeal is **DENIED**.

Marian E. Sullivan  
MARIAN E. SULLIVAN  
Board Judge

We concur:

Harold D. Lester, Jr.  
HAROLD D. LESTER, JR.  
Board Judge

Beverly M. Russell  
BEVERLY M. RUSSELL  
Board Judge

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<sup>2</sup> Because we resolve the case based upon the language of the release, we do not reach the USCG's accord and satisfaction argument.