



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

---

GRANTED IN PART: July 22, 2024

CBCA 7213, 7393

ADAPT CONSULTING, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Andrew Gillman, Denver, CO; and Nathan McKibben, Patrick B. Kernan, and Joseph A. Whitcomb of Whitcomb, Selinsky, P.C., Denver, CO, counsel for Appellant.

Michael Converse and David C. Charin, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

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

**ZISCHKAU**, Board Judge.

Appellant, Adapt Consulting, LLC, challenges a partial termination for default of its contract by respondent, the General Services Administration (GSA), and seeks \$220,870.85 for claims arising under the contract and an unpaid contract balance. We conclude that GSA has failed to justify its termination for default, which is at issue in CBCA 7213, and that Adapt is entitled to recover \$97,907.41 (which includes the remaining unpaid contract balance), plus applicable interest, under the affirmative monetary claims at issue in CBCA 7393.

### Background

On February 4, 2020, GSA awarded Adapt a contract to modernize existing security systems at building 25 of the Denver Federal Center (DFC), occupied by GSA's tenant, the Environmental Protection Agency (EPA). The modernization included updating the existing EPA physical access control system (PACS) to comply with current EPA security regulations. The PACS includes three broad components: access control, security cameras, and intrusion detection systems. Regarding the access controls, the updated PACS was to consist of card readers on interior and exterior doors, request to exit (REX) devices, on-site controllers, and associated equipment.

Adapt's work on the PACS was part of a wider renovation effort being undertaken at the EPA facility. Preceding and occurring simultaneously to Adapt's project, building 25 was being renovated to consolidate multiple lab facilities and to implement a backup data center within the building space. The prime contractor for the building consolidation process was Swinerton Builders. Part of this process involved converting warehouse space into laboratory space, which required, among other things, the construction of new doors within the facility. For the new doors, Swinerton was responsible for constructing the door infrastructure, including running conduit and installing door hardware.

Adapt's contract specifications required it to procure all equipment and software necessary to provide the PACS solution for each door and to integrate the PACS with the EPA's existing HQ enterprise C-Cure 9000 software system. The specifications required Adapt to install Cheetah SE card readers at approximately 110 locations in building 25 in accordance with the manufacturer's specifications, the National Electrical Code, local codes, and commercial best practices. For most of the doors, Adapt replaced existing door readers. For the new doors installed as part of the renovation, Adapt installed new card readers. Adapt was required to maintain under warranty all system components of the PACS system for one year after project completion. Because the enterprise PACS was to be established as a client to the EPA HQ enterprise C-Cure 9000 system, Adapt was not required to acquire access control or visitor management software. Instead, the C-Cure system was "strictly managed and controlled by the Government" through EPA's contracted PACS system administrator, M.C. Dean.

Adapt, at GSA's request, subcontracted with Johnson Controls, Inc. (JCI) to handle a large portion of the PACS installation. JCI's affiliate company, Software House, is the manufacturer of the enterprise C-Cure software system into which EPA's new PACS was to be integrated.

On February 20, 2020, the parties conducted a kickoff meeting, and GSA issued the notice to proceed. Adapt's supervisory team during contract performance consisted of Lisa

Lowery, the program manager; Jennifer Howell, the project manager; and Tom Lowery, the superintendent and construction manager. Contract performance was originally scheduled to conclude on August 6, 2020, but GSA issued several modifications over the course of the contract, ultimately extending the contract performance period to October 22, 2020. As Adapt and its subcontractors neared the completion of its work, GSA and EPA conducted card reader testing on October 19 and 20, 2020. On October 22, 2020, the parties completed a final punch list inspection. Adapt demobilized from the site on October 23, 2020.

### Fault/Fault Clear Issue

On November 24, 2020, Steven Peltier, the PACS system administrator responsible for monitoring the EPA's C-Cure system, emailed Adapt indicating that the C-Cure system was reporting a series of faults at some of the access doors, which were followed within milliseconds by a clearing of the fault state. The parties refer to these occurrences as the "fault / fault clear" (F/FC) issue. The email included data logs for the period of November 16 through 23, 2020. The Cheetah card readers have sensors that monitor the level of electronic resistance (measured in ohms) in the circuit. The C-Cure system installed on the card readers was programmed to recognize different levels of resistance at different door states: 1000 ohms (normal), 500 or 2000 ohms (alert), and greater than 30,000 ohms (door open). When the card reader detected ohm levels outside the prescribed range of values, it would send a "fault" message. When it once again detected one of the defined ohm levels, it would send a "fault clear" message. The multiple F/FC messages indicated that the system was detecting a deviation in the ohm level outside the prescribed value and then, immediately thereafter, the restoration of a prescribed level and the clearing of the fault state.

The parties first discussed the F/FC occurrences in a November 25, 2020, Owner-Architect-Contractor (OAC) meeting. There, GSA directed Adapt to investigate the F/FC messages. On November 30, 2020, Adapt had a JCI technician, David Gose, visit the site to inspect the door access and REX devices and conduct initial field testing to re-create the F/FC messages. Mr. Peltier directed Mr. Gose to devices that were reporting F/FC messages, and Mr. Gose disassembled the devices and checked for damage to the internal cabling, damage to the external cable routing, mis-wiring, ground faults, and other physical damage to the devices. Mr. Gose found no physical issues with the devices or the wiring and cabling. Mr. Gose was only able to recreate the faults when the fixed leaf of some of the double doors was "unpinned." Some of the doors installed with Cheetah card readers were double-door assemblies designed so that one door unlocks by use of an access badge while the other door is a "fixed leaf." "Unpinning" refers to the practice where the fixed leaf door was unpinned from the frame, allowing workers and staff members to enter or exit the space without swiping a badge. As demonstrated in the written record and in the testimony of Adapt and agency witnesses, unpinning doors was common practice among EPA personnel.

Adapt received a second data set from Mr. Peltier covering the period of November 24 through December 1, 2020, in which Adapt and JCI searched for patterns or commonalities between door faults and existing conditions in the field. Adapt also consulted with a door expert. During the December 2, 2020, OAC meeting, Adapt suggested the excessive give in some of the doors (e.g., where door frames are not plumb) could be causing the F/FC messages. Adapt analyzed a third data set from Mr. Peltier covering the period of December 3 through 11, 2020.

During the December 9, 2020, OAC meeting, Adapt suggested the possibility of individuals pulling on doors prior to swiping cards for entry and a need potentially to install stronger door contact magnets. Adapt received a fourth data set with F/FC messages covering December 28 to 31, 2020. During the January 6, 2021, OAC meeting, Adapt disclosed that they had found a pattern emerge correlating the F/FC messages to the unpinning of double leafed doors. Specifically, Adapt described a correlation between F/FC occurrences and work being performed on the lab consolidation project within building 25, which included commissioning of the building's HVAC system. Adapt confirmed that it was "common practice" for the onsite contractor team to unpin the small leaf of a door while the workers were performing duties. Adapt indicated that ninety percent of the F/FC messages corresponded with these commissioning activities.

During the OAC meeting of January 13, 2021, Adapt suggested, based on recommendations by JCI and Software House, that the debounce setting, a time buffer provided to allow the door to settle into the closed position, be increased. Increased sensitivity in the measuring tools was additionally raised as a potential cause of the errors during the January 20, 2021, OAC meeting.

On January 29, 2021, JCI technicians performed a second site visit and tested resistor packs at the doors. The resistor pack readings were within the manufacturer's tolerances and therefore were ruled out by JCI as the cause of the errors. Additionally, Software House technical support was contacted to change the debounce setting from 0 to 10 milliseconds at three doors to test its impact on the errors. During the OAC meeting of February 3, 2021, Adapt provided an update to GSA and EPA about the January 29 testing. During an OAC meeting a week later, Adapt requested additional activity log data in order to analyze the impact of the January 29 testing. A fifth data set for the period of February 3 through 10, 2021, was provided to Adapt for analysis. At the February 17, 2021, OAC meeting, Adapt informed GSA that it had provided the data to JCI for input from JCI's engineers. Adapt indicated that changing the debounce setting did not eliminate the errors, even though it seemed to reduce the quantity or frequency of the errors.

On February 25, 2021, Adapt and JCI performed a third site visit. During this site visit, they tested the shield grounding and found that it was all properly grounded. During

the March 3, 2021, OAC meeting, Adapt requested additional activity log data in order to analyze the impact of the February 25 testing. A sixth data set for the period of February 26 through March 5, 2021, was provided to Adapt for analysis. During the March 17, 2021, OAC meeting, Adapt informed GSA that none of the February 25 testing had any impact, ruling out grounding as the cause of the F/FC occurrences.

On March 16, 2021, GSA issued a substantial completion letter, which excepted the F/FC issue: “GSA is formally accepting substantial completion of [the] Access Controls Project as of March 16, 2021 with the exception of the . . . final punch-list items . . . includ[ing] the resolution to the door alarm issue.” During the March 24 and March 31 OAC meetings, Adapt informed GSA that JCI had exhausted all hardware testing and, based on a consultation with JCI and Software House, suggested a Software House tech support call to investigate the software settings in the C-Cure system. Upon insistence from GSA that the errors must be a hardware issue, Adapt and JCI performed a fourth site visit on April 28, 2021. During this site visit, JCI’s technician replaced thirty resistor packs at doors with the most frequent errors.

On May 6, 2021, Adapt and JCI obtained technical support from Software House. The Software House engineer determined that system hardware and programming settings were within the manufacturer specifications and that the errors could only be duplicated at will by doing something “wrong” to the system (i.e., unpinning or pushing on the door, or leaving a door unlatched). Software House also suggested that, based on site-specific conditions such as laboratories with specialized equipment and older electrical infrastructure, a possible secondary cause of the F/FC messages was electromagnetic interference (EMI) from electromagnetic fields emanating from existing systems within the building.

On May 10, 2021, GSA issued a cure notice to Adapt for its failure to identify and correct the F/FC issue. On May 18, 2021, Adapt responded to the cure notice, stating that there was no evidence that the F/FC messages were caused by cabling or wiring issues and that the most likely cause was EPA employees’ improper use of the system. On June 9, 2021, GSA responded to Adapt, indicating that there were approximately ten card readers that were not functioning properly and “the problem appears to be caused by a hardware issue and/or cabling installation” that was Adapt’s responsibility. GSA stated that Adapt’s response was insufficient and gave it until June 30 to resolve the issue.

On June 30, 2021, Adapt submitted to GSA and EPA a report of its investigation into the F/FC issue that Adapt, JCI, and Software House had conducted over the preceding seven months. The report indicated that the team had spent over 400 hours on the issue, and although the team had spent approximately eighty-five percent of its time investigating the system’s hardware components, it could not find any issue with the Adapt-installed hardware or systems that could account for the F/FC messages. Instead, Adapt found that most F/FC

occurrences appeared in data logs within one minute of an individual either swiping a personal identity verification card or triggering a REX device, correlating the messages with human activity. The report attributed the F/FC messages primarily with individuals unpinning the inactive leaf of double doors but also with propping doors open (i.e., leaving doors unlatched when in a seemingly closed position) and potential EMI.

Regarding unpinning, Adapt explained that its onsite JCI technician was able to replicate the F/FC messages only intermittently while the fixed leaf was unpinned, i.e., by doing something “wrong” or misusing the system. Adapt explained that unpinning the doors permitted the doors to “jiggle” in response to changes in air pressure. The report also indicated this increased the “chatter” or “play” in the door and was found to cause F/FC occurrences. Adapt’s report also indicated that propping open facility doors could have a similar effect to unpinning the doors. Mr. Gose, the JCI technician responsible for installing the Cheetah card readers, testified that, because some of the doors were not “plumb,” individuals would need to push a door closed in order for it to latch properly. He described how he witnessed individuals taking advantage of this feature to prevent doors from latching, effectively propping them open, and how propping doors open permitted door movement similar to unpinning.

Adapt also listed EMI as another possible cause of the F/FC messages. The facility contained a large amount of electronic laboratory equipment and line voltage wiring that causes EMI. GSA witnesses agreed that EMI, if it existed, could, along with power surges, cause F/FC messages. Finally, the report included a series of recommendations to decrease the occurrence of F/FC messages, including enforcing policies to prevent unpinning, tightening door closer adjustment screws to ensure doors cannot be left open, adjusting the debounce settings on the C-Cure system, and replacing unshielded wiring between devices to prevent EMI.

On July 16, 2021, GSA sent a show cause notice to Adapt. The notice informed Adapt that GSA considered its response to its cure notice and the recommendations included in its report insufficient to correct the F/FC issues. On July 26, 2021, Adapt responded to the show cause notice, restating that its investigation showed that the PACS system was working as designed and the most likely cause of the F/FC messages was EPA employees’ improper use of the system. Adapt reiterated that there was no evidence that the F/FC messages were caused by improper installation by Adapt.

On August 27, 2021, GSA informed Adapt that it would be partially terminating the contract for default. On September 8, 2021, Adapt forwarded to GSA letters from JCI and Software House, stating that the F/FC notifications were the result of environmental conditions and that operation of the system was functioning as designed. On September 9,

2021, GSA partially terminated the contract because “Adapt ha[d] failed to correct/fix the card readers” and thirteen doors continued to receive “multiple faults daily.”

### Proceedings Before the Board

On September 14, 2021, Adapt appealed its termination for default to the Board. The appeal was docketed as CBCA 7213.

Subsequently, on May 5, 2022, Adapt filed a second appeal, which the Clerk docketed as CBCA 7393. That appeal arises out of an affirmative monetary claim in the amount of \$228,123.47 that Adapt submitted to the agency contracting officer on January 31, 2022, asserting a right to payment for multiple denied change order requests (CORs) and requests for equitable adjustment (REAs), for costs incurred investigating the F/FC occurrences, for additional labor costs associated with escorting unbadged personnel, and for its outstanding final invoice. The contracting officer denied that claim in its entirety on April 13, 2022. During proceedings before the Board, Adapt reduced the amount being sought to \$220,870.85.

At the parties’ request, the Board consolidated CBCA 7213 and 7393 by order dated June 17, 2022. The Board conducted a three-day hearing in both appeals from March 28 to 30, 2023, during which the parties presented witness testimony.

### Discussion

#### CBCA 7213: Partial Termination for Default

GSA claims that Adapt failed to fulfill its contractual obligations because the unresolved F/FC messages rendered the PACS system defective as installed. GSA asserts that the F/FC messages were the result of Adapt’s defective installation and Adapt’s failure to eliminate the messages justified GSA’s termination.

The Board reviews contracting officer decisions de novo under the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018). *Department of Transportation v. Eagle Peak Rock & Paving, Inc.*, 69 F.4th 1367, 1377 (Fed. Cir. 2023). “[O]nce an action is brought following a contracting officer’s decision, the parties start in court or before the [B]oard with a clean slate.” *Id.* at 1376 (quoting *Wilner v. United States*, 24 F.3d 1397, 1402 (Fed. Cir. 1994)). Contracting officers have broad discretion in deciding whether to terminate a contract for default. *Consolidated Industries, Inc. v. United States*, 195 F.3d 1341, 1343 (Fed. Cir. 1999). However, “a default termination is a drastic sanction which should be imposed (or sustained) only for good grounds and on solid evidence.” *Lisbon Contractors, Inc. v. United States*, 828 F.2d 759, 765 (Fed. Cir. 1987) (citations omitted). When a

contractor challenges the termination, the Government bears the burden of proving that the termination was justified. *Eagle Peak Rock*, 69 F.4th at 1375. The Board will sustain a default termination only if the Government shows that the circumstances at the time of termination justified the decision, even if based on grounds unknown to the contracting officer. *Id.* at 1376.

We conclude that the Government has failed to establish that the F/FC messages were the result of defective PACS hardware or installation. Adapt's witnesses testified credibly that its system functioned as designed and that the F/FC messages arose from environmental factors such as unpinning or propping open the doors, door frame issues which allowed doors not to latch properly, and EMI. Adapt and GSA witnesses agreed that people would unpin doors "all the time" in the facility as well as prop them open. Adapt demonstrated that F/FC messages occur when a person interacts with a door that is unpinned. Adapt also explained that some of the doors in the facility had "a lot of play," permitting the door to jiggle when a person attempted to open a door without unlocking it and that this jiggling could also cause F/FC messages. Adapt recommended that GSA tighten door frames and door hardware. Adapt showed that misuse of the security system and issues with the door frames caused F/FC messages because the messages generally correlated with human activity within the facility. The EPA C-Cure system administrator and GSA's project manager for the building 25 renovation also agreed that EMI and power surges could affect the resistance level and cause a fault to be reported to the C-Cure system.

GSA argues that the unpinning of doors is an unreasonable explanation for the F/FC messages because eighteen other facilities used the Cheetah readers, none encountered F/FC messages at the level found at building 25, and the errors were fixed whenever they occurred. GSA's evidence regarding these other facilities was so minimal (no specifics were given as to what caused any such F/FC messages and how the F/FC issues were "fixed") that it carries no weight. Additionally, GSA argues that unpinning is not a reasonable cause because not all doors experiencing F/FC messages had pins and not all doors with pins caused F/FC messages. As we stated above, the evidence shows a strong correlation between unpinning a door and F/FC messages. Doors without pins also could report faults if the doors were propped open, were not latched properly, or had too much play within the door frame. The evidence further shows that EMI and power surges from EPA sources may have caused F/FC messages.

GSA argues that its termination was proper because Adapt failed properly to investigate the issue and cooperate with the agency. We do not agree. Adapt, JCI, Software House, and other consultants (1) investigated the issue for many months, (2) met repeatedly with GSA and EPA staff regarding the investigation, (3) requested data from EPA, (4) tested and replaced components of the system to verify that the PACS system was functioning as designed, (5) checked the wiring and cabling and any ground faults and determined that the



system was installed and functioning properly, (6) disconnected and reconnected devices, (7) correlated the data logs provided with existing door and environmental conditions, and (8) proposed software and environmental solutions. The record shows that Adapt and its team reasonably investigated the F/FC issue and cooperated with GSA and EPA. GSA plainly does not like the results of Adapt's investigation, but GSA has not identified an alternate cause for the F/FC occurrences to show that Adapt's analysis is incorrect.

Accordingly, GSA has failed to show that the termination for default is justified, and we therefore invalidate the termination. *See Sentell Brothers, Inc.*, DOT BCA 1824, 89-3 BCA ¶ 21,904, at 110,224-28, *motion for reconsideration denied*, 89-3 BCA ¶ 22,219.

### CBCA 7393: Adapt's Affirmative Monetary Claims

#### Claim A – Power Outages

Entitlement. Adapt seeks \$5277.30 for increased labor and material costs to replace control card readers and related equipment damaged as a direct result of two planned building power outages. During the weekend of August 15, 2020, there was a planned power outage (first outage) at building 25 for work related to another contract. The first outage blew out several fuses supporting card readers and related equipment that Adapt had installed. Adapt was not informed of the planned outage. On Monday, August 17, 2020, Adapt personnel came to the facility, discovered the power outage, and found that the card readers which they had previously installed and which had been operational on August 14 were now disrupted and required reset actions. To reset the card readers, Adapt's controls subcontractor (JCI) had to return to the facility and dismount, reinstall, and reset the card readers.

On September 9, 2020, at 1:30pm, Adapt was notified of another planned power outage (second outage) scheduled for the upcoming weekend, but GSA contacted Adapt after its workers had left the site for the rest of the week. Although Adapt could have sent its personnel back to the facility to take protective measures before the weekend outage occurred, it does not appear that GSA directed Adapt to do so, and Adapt felt that protective measures that it had already put in place would be adequate. Upon arriving on site after the weekend power outage, Adapt was informed that the outage was far worse than expected and there were unresolved issues from the weekend shutdown. This included the facility's generator and uninterruptible power supply (UPS) system, which were still offline. During the workday, Adapt's superintendent heard a loud "boom" sound and was later informed by the EPA staff that the noise was the facility's UPS, which had blown multiple fuses. The electrical equipment recently installed by Adapt's subcontractor was promptly inspected, and some of the equipment was damaged, including a power supply in room 2A-710 that had to be replaced and card readers connected to the destroyed power supply.

On October 22, 2020, Adapt submitted a request for equitable adjustment (REA) in the amount of \$5277.30 for labor and materials for the repairs required by the first and second power outages. The labor for the first outage involved investigating all of the installed equipment, diagnosing the card reader problems, and then resetting the card readers by having two JCI employees return to the facility for a full day to dismount, reinstall, and reset the card readers. The second outage involved labor, equipment, and materials to replace the destroyed power supply and the damaged card readers. On December 9, 2020, the contracting officer denied the REA on the basis that Adapt had failed to show the power outages were the cause of the damage and Adapt had failed to demonstrate the Government was at fault for the damage.

We find that the planned outages caused the damage to Adapt's equipment described above and required extra labor hours for investigating the resulting damage to the PACS and then conducting equipment repairs and replacements. GSA faults Adapt for not better protecting the equipment in response to a known upcoming event. Here, though, the surges were so great that they damaged government equipment that presumably the agency had taken steps to protect. Because the surge was more powerful and destructive than what even the Government had anticipated or reported to Adapt, we will not fault Adapt for failing to add protective measures beyond those that were already in place before it was notified of the impending second surge. Contrary to GSA's assertions, we determine that Adapt acted reasonably in protecting the equipment under normal operating conditions and that Adapt should not bear responsibility for damages caused by the building power outages accompanied by power surges.

Quantum. Adapt divides the costs that it allegedly incurred for Claim A into two groups: (1) costs incurred by its subcontractor, JCI, and (2) costs for Adapt's own internal labor (including preparing its REA).

As for subcontractor costs, for the first outage, Adapt seeks \$1591.84 to cover the labor costs of two of JCI's employees, who, according to the summary sheet that Adapt attached to its claim, spent sixteen hours resetting the card readers after the outage. Yet, there is no contemporaneous evidence in the record that JCI employees spent sixteen hours doing that work, that JCI ever billed Adapt for those "extra" sixteen hours, or that Adapt paid or owes JCI any extra money for that work. "The preferred method for proving a contractor's claim is through the introduction of actual cost data such as time sheets or payroll records, if available." *HOF Construction, Inc. v. General Services Administration*, GSBGA 13317, et al., 96-2 BCA ¶28,406, at 141,849. As such, the contractor "must provide the [tribunal] with specific documentation of the expenses caused by the government's change." *Doninger Metal Products, Corp. v. United States*, 50 Fed. Cl. 110, 125 (2001); see *Dawco Construction, Inc. v. United States*, 930 F.2d 872, 882 (Fed. Cir. 1991) ("[T]he 'actual cost method' is preferred because it provides the [tribunal], or contracting officer,

with documented underlying expenses, ensuring that the final amount of the equitable adjustment will be just that—equitable—and not a windfall for either the government or the contractor.”), *overruled in part on other grounds, Reflectone, Inc. v. Dalton*, 60 F.3d 1572 (Fed. Cir. 1995). The only evidence in the record is oral testimony at the hearing that Adapt representatives saw JCI working the issue, but no explanation was provided regarding the absence of any records establishing that JCI billed for its work or that Adapt owes JCI payment for such work. Without justification for the absence of supporting documentation, this amount is not recoverable.

In contrast, for JCI costs relating to the second outage, Adapt produced a proposal that it had received from JCI to replace and install a new power supply for \$1636.49. Although the evidence in the record that Adapt actually paid this amount is minimal, as none of Adapt’s witnesses were questioned about this invoice at the hearing, it seems more likely than not that Adapt had JCI perform this work at this amount and that this amount is recoverable.

Finally, for both outages, Adapt seeks internal labor time—one hour for Adapt’s project manager (Jennifer Howell) and eight hours for its “Superintendent/QC” (Tom Lowery)—and \$480 for REA preparation. There is no testimony explaining what the superintendent did for eight hours in response to these outages or what the project manager did for an hour; there is nothing explaining the time for the REA preparation; and there are no time cards or other time-keeping records about this work. In fact, when Mr. Lowery testified about work that he believed JCI employees performed to address the damage in Claim A, he never mentioned that he himself spent eight hours on this issue. The only thing that we have is the summary statement in Adapt’s REA alleging entitlement to these costs, with no detail or support. “Normally, we would expect . . . proof [of damage from a government change] to consist of actual contemporaneous data—accounting and payroll records, daily reports of contract activity, time records, and the like—supporting what the contractor believes constituted extra work beyond the scope of its contract.” *United Facility Services Corp. v. General Services Administration*, CBCA 5272, 18-1 BCA ¶ 37,086, at 180,522.

For Claim A, we limit Adapt’s award to \$1636.49 for the JCI work identified in its proposal for the second outage work, supplemented by an 11% markup for general and administrative costs (G&A) of \$180.01, a 10% profit markup of \$181.65, and a 2.75% markup (on costs but not profit) for bonding of \$49.95, for a total of \$2048.10. Any other claimed costs for JCI’s work on the first outage and for Adapt’s internal labor hours are denied.

### Claim B – Flooding

Entitlement. Adapt claims \$24,107.17 for increased labor and material costs related to replacing data cables damaged by flooding at its workplace at the EPA facility. In April 2020, the water to building 25 was shut off by another government contractor. On April 27, 2020, when the Government restored water without venting air inside the pipes, a bathroom valve burst, which in turn flooded the bathroom and the adjacent hallway. Adapt's subcontractor, National Network Services, Inc. (NNSI), had been preparing the cable runs on the morning of April 27, with the cables being staged on the floor in the hallway for installation in the ceilings that afternoon to terminate in Room 1C-240. All was well when the NNSI workers took their lunch break. When they returned, they found that water from the bathroom had flooded the hallway, partially soaking their cables. The cable manufacturer would not warrant the cables based on the water damage. The project manager prepared an incident report that same day (the report is misdated March 27, the correct date was April 27). The program manager contacted the contracting officer by email on May 7 about an equitable adjustment for the work to replace the damaged cable. The contracting officer replied:

After reviewing the incident at Building 25, the GSA has determined that there was no negligence on the part of GSA and that it was an accident. Adapt Construction is not entitled to a Change Order Request based on unforeseen site conditions. I do realize that equipment was damaged as a result of the incident, and I suggest that you contact your insurance agent about filing a claim. The GSA will allow a reasonable amount of a time extension as a result of the damaged cabling. Please provide me with a proposal for the amount of time needed to secure and install the cabling for our review.

On October 22, 2020, Adapt submitted its REA to the contracting officer, seeking \$24,104.17. One component of the costs was \$13,951.24 for NNSI's labor and material for replacing the damaged cable. NNSI's proposal shows materials (mostly the cable cost) of \$5222.25 and labor of \$8728.99 for removing the damaged cable and installing the new cable. The claim indicates that NNSI's labor amounted to ninety-two hours. The other main component of the REA cost is \$6466.03 for Adapt's burdened direct labor, composed of forty hours for Lisa Lowery, sixteen hours for Jennifer Howell, four hours for REA preparation and CPM scheduling work, and one hour for a construction contracting consultant who reviewed the REA. The remaining amounts are for G&A (\$1534.64), profit (\$1548.59), and bond (\$603.68). On December 9, 2020, the contracting officer denied the REA, stating that Adapt was warned not to store its equipment on the floor in the hallway and that Adapt's failure to heed this warning makes the damage Adapt's responsibility.

GSA does not contest that the equipment was damaged by the flooding or that Adapt incurred additional labor and material costs replacing the cables. Adapt asserts that it was not warned against staging cables in the hallway, and GSA does not appear to rely on the contracting officer's position that Adapt was warned. In any event, we agree with the testimony of Adapt's witness that staging the cable in the hallway as part of installing the cable through the ceiling above was reasonable.

Quantum. We find NNSI's costs of \$13,951.24, which are supported by a contemporaneous NNSI invoice to Adapt for the costs that it incurred, reasonable and recoverable. An 11% markup for G&A of \$1534.64, a 10% profit markup of \$1548.59, and a 2.75% markup (on costs but not profit) for bonding of \$425.84 is added to that amount, for a total of \$17,460.31.

Adapt also seeks to recover forty hours of labor time for Ms. Lowery, Adapt's program manager, spent interfacing with the contracting officer and preparing the REA and sixteen hours for Ms. Howell, Adapt's project manager, spent working on this issue. The only evidentiary document that we have indicating that Ms. Lowery worked forty hours and that Ms. Howell worked sixteen hours on this issue is the "Detailed Cost Summary" in the REA itself. There are no contemporaneous time cards or daily logs produced in support. The costs are denied for lack of adequate support. Similarly, five claimed hours of time (four by Adapt itself, and one by "Redstone") spent preparing the REA are denied for lack of time records or any other contemporaneous documentation reflecting time spent preparing the REA.

#### Claim C – Replacement of Existing Conduit

Adapt claims that it is entitled to an additional \$48,402.53 for the costs involved in replacing existing conduit in building 25. On May 29, 2020, Adapt submitted request for information (RFI) 49 to notify the contracting officer that a differing site condition existed. Although the specifications identified that existing one-inch conduit was in place for Adapt to pull through its wiring, Adapt found upon inspection that seventy of the ninety-seven doors had only half-inch conduit in place. On May 29, 2020, GSA accepted Adapt's proposed correction and directed that Adapt provide a change order request for approval before work began.

On July 14, 2020, Adapt submitted COR #9, estimating the cost to be \$75,697.20. Adapt proposed that its subcontractor, JCI, complete the work, with Adapt providing project management and associated support. On July 23, 2020, Adapt notified the contracting officer that delay in approval of COR #9 would delay project completion. On July 28, 2020, the contracting officer sent Adapt a cure notice, directing Adapt to proceed with the COR #9 work as instructed. The contracting officer did not accept Adapt's pricing for COR #9 but

stated a willingness to negotiate a fair and reasonable price for the change. On August 6, 2020, Adapt submitted a revised COR #9 in the amount of \$68,727.02, in which Adapt again assigned the majority of the work to JCI. Based upon an independent government estimate (IGE), dated September 22, 2020, the revised amount was determined to be fair and reasonable.

Adapt performed the work between July and October 2020. On November 30, 2020, Adapt submitted a REA for the work related to COR #9 in the amount of \$94,886.53. Review of Adapt's REA reveals that Adapt self-performed the vast majority of the work rather than subcontracting it to JCI. On September 9, 2021, the contracting officer issued a unilateral modification to increase the contract price by \$46,484 for work associated with RFI 49 based on another IGE, dated December 18, 2020. In this later IGE, it was noted that Adapt self-performed the work instead of subcontracting with JCI and fished wire through the wall for rooms that were originally listed as being wall-mounted conduit. At trial, Brenda Galloway, GSA's construction manager for the building 25 project, testified that fishing wire through the wall, for the seven or eight doors that did not have wall-mounted conduit, should have resulted in reduced labor and material costs because Adapt did not have to buy or install conduit. Ms. Galloway testified that this was the reason for the lower IGE.

Adapt claims the difference between the amount that it claimed in its revised REA (\$94,886.53) and the amount that the contracting officer paid in the unilateral modification (\$46,484). GSA admits that there was a differing site condition that required Adapt to perform additional work but asserts that Adapt has received already the fair and reasonable value of the work.

We conclude that Adapt is entitled to \$68,727.09 (some of which GSA had already paid Adapt) for the work regarding RFI 49. Neither Adapt's current request nor the agency's most recent IGE are persuasive. Instead, we find the costs stated in the August 6, 2020, proposal, and approved in the first IGE, to be reasonable based on our assessment of the hours claimed for the required work. Adapt is entitled to recover \$68,727.09 on Claim C. GSA has already paid Adapt \$46,484, which leaves Adapt entitled to recover here the remaining \$22,243.09.<sup>1</sup>

---

<sup>1</sup> Because of the manner in which we have resolved Claim C, we need not address GSA's argument that General Services Administration Acquisition Regulation 552.243-71(m) (48 CFR 552.243-71(m)), a standard clause in Adapt's contract, limits any recovery to the amount identified in revised COR #9, which was the last proposal that Adapt submitted to the contracting officer before the changed work was authorized.

### Claim D – Fixing Exterior Door

Adapt claims \$3778.22 for costs incurred to repair an exterior door pathway for building 25, which Adapt asserts was a differing site condition. On June 26, 2020, Adapt submitted RFI 48A and indicated that the rubber gasket and backing plate required by the contract were insufficient to cover a gap in the wall between the reader and the exterior doors. On July 6, 2020, GSA directed Adapt to seal the gap with an appropriate air and moisture barrier and provide a proposal for approval. On August 12, 2020, Adapt submitted RFI 60, indicating that one of the doors lacked the necessary hardware and access to install the components called for in the contract, which it claimed was another differing site condition. On August 24, 2020, GSA directed Adapt to move forward with the work required for RFI 60.

On October 2, 2020, Adapt submitted COR #14 for the costs of the work associated with RFIs 48A and 60, in the amount of \$21,398.22. On November 23, 2020, Adapt revised COR #14 to \$23,112.29, including additional incurred costs for the completed work. On September 9, 2021, the contracting officer issued a unilateral modification, increasing the contract price by \$17,620, for work associated with RFIs 48A and 60, an amount based upon an IGE dated December 18, 2020. Adapt seeks the difference between the amount that Adapt initially requested and the amount awarded in the unilateral modification. We conclude that Adapt has failed to support its current request, and therefore, we deny claim D. We have carefully reviewed the written record and testimony, but Adapt has failed to explain the basis for its claim of \$21,398.22, while GSA's IGE appears to capture the reasonable costs of the work.

### Claim F – Investigation Costs

Entitlement. Adapt claims \$41,984 for its investigation of the F/FC issue as a change to the contracted scope of work. GSA acknowledges that it expressly directed Adapt to investigate the F/FC issue but asserts that Adapt was required to troubleshoot and resolve the F/FC issue, which it attributes to Adapt's defective work. As discussed above, Adapt has shown that it properly installed the system, that the system was functioning as designed, and that the F/FC messages were the result of the environmental conditions at building 25 that were not the responsibility of Adapt.

GSA argues that the warranty provision of the contract and Adapt's obligation to provide "Troubleshooting and Problem Resolution" for issues arising from "System Incident Reporting" place Adapt's investigation within the scope of the contract. GSA misinterprets these provisions. The Warranty clause of the contract obligates Adapt to "remedy at [its] expense any failure to conform, or any defect." 48 CFR 52.246-21 (2019). Here, GSA has not established that there was any defect in the PACS to remedy. Similarly, Adapt's

obligation to provide troubleshooting support concerns routine troubleshooting errors within the system, not errors stemming from environmental factors outside of the control of Adapt. Adapt has met its burden in showing that the request to investigate and Adapt's subsequent investigation were outside the scope of the contract.

Quantum. Adapt's program manager claims in a cost summary that she spent a total of 110.25 hours dealing with the investigation, communications with GSA and EPA, and preparation of the investigation report and that Adapt's project manager spent a total of 140.25 hours working this issue. Although it seems likely that these Adapt employees spent time on the F/FC investigation, the record lacks any supporting time entries, daily logs, or other contemporaneous substantiating documentation of the hours.<sup>2</sup> To the extent that we might think of giving some type of "jury verdict" award to account for that likelihood, the Court of Appeals for the Federal Circuit has instructed us that "the amount of the recovery can only be approximated in the format of a 'jury verdict' where the claimant can demonstrate a *justifiable inability to substantiate* the amount of his resultant injury by direct and specific proof." *Dawco Construction, Inc.*, 930 F.2d at 882 (quoting *Joseph Pickard's Sons Co. v. United States*, 532 F.2d 739, 742 (Ct. Cl. 1976) (emphasis added)). A contractor's lack of concern about documenting time and costs or belief that it was too busy to document time "is not the type of 'justifiable inability' to produce evidence of actual costs that would warrant the use of the jury verdict approach." *Production Corp.*, DOT BCA 2424, 92-2 BCA ¶ 24,796, at 123,695.

The claim also includes a total of 128 hours for subcontract work by JCI. Although the record contains substantial testimony regarding the JCI technicians' investigation work, the record lacks any claim by or payment to JCI for these hours. Accordingly, we see no basis to award the claimed costs.

Adapt has not justified its failure to support its claimed costs in Claim F.

---

<sup>2</sup> The Board requested a supplementation of the record regarding supporting time entries referenced in the program manager's hearing testimony, and while the appellant submitted a spreadsheet listing dates, hours, and work descriptions, we will not consider this documentation because it was not produced to GSA during discovery, and GSA did not have an opportunity to cross examine the program manager during the hearing on this newly submitted documentation. The other documentation recently submitted by Adapt regarding the other claims will not be added to the record because the documentation is either irrelevant or not previously furnished to GSA during the discovery period.



### Claim G – Labor Costs Caused by Delay in Providing Badges

Adapt claims \$36,564.42 for costs incurred due to decreased efficiency resulting from GSA's refusal to facilitate site access. Adapt explained that, because GSA did not fulfill its obligation to provide adequate badging for Adapt and its subcontractors to navigate the facility, Adapt's site superintendents and its CEO were required to spend additional time escorting personnel around the building. In its documentation supporting this claim, Adapt estimated that thirty percent of three employees' total labor time was dedicated to working around the badging issue. We conclude that the written record and the testimony at the hearing do not adequately support Adapt's thirty percent estimate or the additional costs being claimed. Accordingly, we deny claim G.

### Claim H – Rescheduling of Training Session

Adapt claims \$4604.18 for costs incurred for having to reschedule a training session for EPA personnel twice after two facility closures on the days it was scheduled. Adapt and JCI personnel arrived at the facility on the originally scheduled date (November 9, 2020) for the training. Upon arrival, they were informed that the facility was closed because of COVID issues. EPA failed to notify Adapt that the facility was closed until JCI and Adapt personnel were at the facility. Adapt and JCI left without conducting the training and allegedly lost that day due to the agency's failure to give proper advance notice of the closure. Some days later, the same scenario was repeated. JCI trainers and Adapt arrived for the training. Upon arrival, they were told that the facility was again closed. Adapt therefore had to reschedule the training once more. Ultimately, the training was provided on the third visit.

On November 23, 2020, Adapt submitted a change order that included a claim for the time of the JCI and Adapt personnel lost due to the two cancellations of the training session. On September 9, 2021, the contracting officer rejected Adapt's requested costs for the rescheduled training on the basis that Adapt's performance was delayed, which only entitled Adapt to a non-compensable time extension. Adapt argues that this is not a performance delay issue but rather a failure by the agency to give notice of the building closure so that the contractor could avoid the unnecessary costs of traveling to the facility and then being sent away due to the closure.

Whatever the merits of the claim, Adapt again has provided no time records, pay records, or contemporaneous documents showing who traveled to the facility and how many hours they expended on the visit. In such circumstances, Claim H is denied.

Claim I – Outstanding Invoice

Adapt claims \$56,155.91 for its payment application submitted on August 16, 2021, for the amount remaining on the contract. On August 27, 2021, the contracting officer rejected Adapt's payment application, asserting that there was insufficient information to determine the amount Adapt may be owed. GSA argues that it properly withheld this amount because Adapt failed to complete the contract and that GSA has the right to retain funds from a defaulted contractor to be applied against the cost of completing the work. We have concluded that Adapt completed the contract work and GSA wrongly terminated the contract for default. Adapt is entitled to receive the remaining contract value in the amount of \$56,155.91.

Decision

CBCA 7213 is **GRANTED** and CBCA 7393 is **GRANTED IN PART**. We conclude that GSA's partial termination for default was improper and that Adapt is entitled to \$97,907.41 plus applicable CDA interest pursuant to 41 U.S.C. § 7109(a).

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU

Board Judge

We concur:

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

Marian E. Sullivan

MARIAN E. SULLIVAN

Board Judge