UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

APPELLANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT GRANTED; RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT DENIED: July 25, 2025

CBCA 8431

TRIBAL HEALTH, LLC,

Appellant,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent.

Edward T. DeLisle, Andrés M. Vera, and Amaiya L. Johnson of Thompson Hine LLP, Washington, DC, counsel for Appellant.

Anthony E. Marrone, Office of the General Counsel, Department of Health and Human Services, Boston, MA; and Eno-Obong J. Essien, Office of the General Counsel, Department of Health and Human Services, Baltimore, MD, counsel for Respondent.

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

LESTER, Board Judge.

Soon after this appeal was filed on May 7, 2025, appellant, Tribal Health, LLC (Tribal Health), filed an emergency motion for immediate declaratory relief, which the Board interpreted as seeking partial summary judgment on entitlement. In July 2024, Tribal Health executed a bridge contract with the Indian Health Service (IHS) to provide hospital emergency room health care services for three months at a rural hospital under a bridge contract, which, through an option exercise, IHS extended through the end of December

2024. On the day that the contract was set to conclude, the IHS contracting officer sent Tribal Health an email directing it to continue with the work covered by the bridge contract, which Tribal Health interpreted to be the exercise of a second option in the bridge contract. IHS, however, did not view the contracting officer's email as an option exercise. IHS says that, by sending the email, the contracting officer was directing Tribal Health to continue work that would be covered by a *new* contract that the parties would negotiate at a later date, which would include lower hourly rates than those authorized by the bridge contract. IHS later sent what it calls a "letter contract" to Tribal Health for signature, but Tribal Health disputed IHS's right to require it to pay its hospital workers less than that to which IHS had agreed in the bridge contract. Because Tribal Health has not signed the letter contract, IHS has paid Tribal Health *nothing* for more than $8 million in hospital health care services that Tribal Health has provided (and continues to provide) since January 2025, even though IHS does not dispute that Tribal Health should eventually be paid.

Before the Board now are cross-motions for summary judgment asking us to identify the contract mechanism under which Tribal Health is currently providing services. IHS asserts that we should adopt the letter contract as a binding agreement between the parties, while Tribal Health believes that the IHS contracting officer's December 31, 2024, email requiring Tribal Health to continue to provide services should be viewed as an implicit exercise of an option in the bridge contract. We have expedited proceedings in this matter, without objection from either party, based on Tribal Health's complaints that it is having to incur significant financing costs through letters of credit to allow it to pay the employees providing the hospital services, given IHS's refusal to pay any of the invoices that Tribal Health has submitted since January 2025, and that its ability to continue to finance the entirety of the Pine Ridge emergency department (ED) services, without any payment from IHS, is near an end.

For the reasons set forth below, because it is a basic rule of contract law that a contract comes into existence only through an offer and a voluntary acceptance of that offer, IHS cannot bind Tribal Health to a letter contract to which Tribal Health has never consented. That being said, because the email from the IHS contracting officer directing Tribal Health to continue work after December 31, 2024, identified a lower price than required by the bridge contract's option provision, Tribal Health could not reasonably view the email as a valid exercise of the option, even though, had it wanted, it could have waived (but was not required to waive) the pricing defect and agreed to perform at the lower price. The situation before us, then, involves a contractor that has been performing millions of dollars in essential services at the contracting officer's direction and insistence for more than seven months without a contract. Even though Tribal Health could have walked away from this project (and remains entitled to do so) given IHS's failure to exercise the bridge contract option, we understand its reluctance to do so given the severe consequences that would result for

patients at the rural hospital at issue. In situations like the one in which Tribal Health finds itself, the contractor is entitled to a quantum meruit payment representing the reasonable value of Tribal Health's services to the Government which is defined by the cost that IHS would otherwise have had to pay for the services had it not simply directed Tribal Health to provide them. Given IHS's acknowledgment that Tribal Health was the *only* entity that was capable of immediately providing emergency room services at the hospital in question after January 1, 2025, and that IHS had no other option but to require Tribal Health to continue providing services, the reasonable value of those services is what IHS would have had to pay had it utilized the only contract vehicle that would have required Tribal Health to perform and was available to it—that is, IHS must pay Tribal Health the rates set forth in the bridge contract. We grant Tribal Health's motion for partial summary judgment and deny IHS's cross-motion.

Statement of Undisputed Facts

I. The Bridge Contract

The Pine Ridge IHS Hospital in Pine Ridge, South Dakota, is "the largest location" of the rural hospitals within IHS, with "an annual patient volume of 18,500." Appeal File (AF), Exhibit 2 at 1-2.[1] Prior to July 2024, Tribal Health was, pursuant to a contract with IHS, providing ED management and staffing services (inclusive of work performed by an emergency room director, physicians, medical assistants, and registered nurses) at Pine Ridge, as well as at a second rural hospital in Rosebud, South Dakota. *See id.* at 1, 3. This Tribal Health contract expired on June 30, 2024. *See id.*

In May 2024, anticipating the June 30 expiration of the Tribal Health contract, IHS awarded two new indefinite-delivery indefinite-quantity (IDIQ) contracts for ongoing ED services at the Pine Ridge Hospital, the Rosebud Hospital, and three other hospitals in the Great Plains area. *See* AF Exhibits 2 at 3, 6 at 1. One of those IDIQ contracts was awarded to Tribal Health and the other was awarded to another contractor, Prime Physicians, PLLC (Prime Physicians). The work at the five hospitals was to be split between the two contractors through task order awards. *See* AF Exhibits 2 at 3, 6 at 1.

On June 28, 2024, Tribal Health received a task order for twelve months of services at the Rosebud Hospital, and Prime Physicians received the corresponding task order for Pine

[1] Unless otherwise noted, a reference in this decision to an "AF Exhibit" relates to an exhibit in the Rule 4 appeal file, while a reference to a "Complaint Exhibit" relates to an exhibit accompanying the complaint that Tribal Health filed on May 30, 2025.

Ridge. AF Exhibits 2 at 3, 6 at 1-2. The task orders originally identified a required start date for services of July 1, 2024. *See* AF Exhibit 2 at 3; *see also Prime Physicians, PLLC v. United States*, 174 Fed. Cl. 190, 192-93 (2024) (discussing procedural history of this contract award and other matters that eventually became the subject of protests). Under the terms of the contract, a contractor could not begin staffing the ED until it had satisfied all credentialing and privileging requirements. AF Exhibit 2 at 2-3. In addition, the contract required that all necessary documentation to support credentials and privileges had to be submitted at least forty-five days before the contractor commenced work in a process that normally took three to four months to complete. *Id.*; AF Exhibit 3 at 1; *see Prime Physicians*, 174 Fed. Cl. at 193. Because Tribal Health was already providing services at Rosebud and Pine Ridge, it already had the necessary credentials and privileges in place at both locations that would allow it immediately to begin (or, in reality, continue) work under the new task order. Prime Physicians, however, did not.

Because the timing of the task order award made Prime Physicians' compliance with the credentialing and privileging requirement by July 1 impossible, IHS reissued Prime Physicians' task order with a new start date of October 1, 2024, and reduced its performance period to nine months. *See* AF Exhibit 2 at 2. In addition, on July 2, 2024, IHS awarded Tribal Health a three-month bridge contract (contract no. 75H70624C00020) to allow it to continue providing the ED services that it had already been providing at Pine Ridge through September 30, 2024. AF Exhibit 3 at 1 & 7. The bridge contract was structured as a "Non-Personal Healthcare Service, Commercial Item, Labor Hour Contract with Fixed, Fully Loaded (all-inclusive) Hourly Rates" for personnel providing the required services at the hospital. AF Exhibit 3 at 2; *see* Appellant's Statement of Undisputed Material Facts (ASUMF) (May 30, 2025) ¶ 10; Respondent's Statement of Genuine Issues (RSGI) (June 24, 2025) ¶ 10. The award to Tribal Health was a directed award made on a non-competitive sole-source basis pursuant to Federal Acquisition Regulation (FAR) 6.302-2 (48 CFR 6.302-2 (2024)) based upon unusual and compelling circumstances. ASUMF ¶ 11; RSGI ¶ 11. The total award amount for the base period of performance was $5,469,990.85. AF Exhibit 1 at 1. The pricing in the bridge contract was higher than what Tribal Health had proposed for the full one-year Pine Ridge contract that it was not awarded because, according to Tribal Health, "the relatively short staff deployment periods required by IHS, . . . without the assurance of long term staffing assignments," required Tribal Health to offer "more favorable compensation and other terms" in an effort "to attract a high quality pool of [ED] staff on such short notice and without the assurance of long term staffing assignments." AF Exhibit 34 at 3.

Although the initial period of performance for the bridge contract was only ninety days (July 1 through September 30, 2024), *see* AF Exhibit 1 at 1; ASUMF ¶ 12; RSGI ¶ 12, the contract incorporated the clause at FAR 52.217-8, "Option To Extend Services (NOV

1999)," authorizing IHS unilaterally to extend the period of performance for up to six months following the end of the initial period of performance. AF Exhibit 1 at 51; *see* Complaint Exhibit 4 at 2-3; Respondent's Statement of Undisputed Material Facts (RSUMF) (June 24, 2025) ¶ 5; Appellant's Statement of Genuine Issues (ASGI) (June 27, 2025) ¶ 5. It also incorporated FAR 52.217-9, "Option To Extend the Term of the Contract (MAR 2000)," which authorized IHS to extend the total duration of the bridge contract (including any option periods) up to a year (ending July 1, 2025). AF Exhibit 1 at 51; *see* RSUMF ¶ 5; ASGI ¶ 5.

IHS justified the directed award by indicating that "[d]ue to the extremely rural and remote locations of the Service Units and a nationwide shortage of healthcare providers (among other factors), [IHS] has not been able to retain or recruit qualified federal staff to provide the required services." AF Exhibit 2 at 2. It recognized "the critical need for the required services and [the need] to avoid the negative impacts of a lapse in services." *Id.* It justified the directed award in SAM.gov as follows:

> Tribal Health is currently performing the work described above under a contract that expires on June 30, 2024. This justification for other than full and open competition (JOFOC) supports the award of a bridge contract for emergency department services to maintain continuity of services for Pine Ridge Hospital during the time necessary to complete the actions necessary for the agency's ongoing follow-on competitive procurement for [Great Plains Area (GPA)] IHS ED Management and Staffing Services. The intended bridge contract anticipates a 90-day period of performance from July 1, 2024 to September 30, 2024.

AF Exhibit 4 at 2; *see* AF Exhibit 3 at 1 (Justification and Determination Memorandum).

Tribal Health commenced performance under the bridge contract on July 1, 2024. ASUMF ¶ 13; RSGI ¶ 13. Subsequently, a protest of the task order award to Prime Physicians was filed with the Government Accountability Office (GAO), in response to which IHS, on July 22, 2024, acknowledged a defect in the award process and agreed to take corrective action through a new competitive procurement for the Pine Ridge ED services. AF Exhibit 6 at 1. On July 25, 2024, Prime Physicians filed a protest of the proposed corrective action in the Court of Federal Claims. *Id.* at 1-2. Believing that it could not pursue corrective action while the protest was pending, IHS exercised an option to extend the Tribal Health bridge contract's performance period through December 31, 2024. AF Exhibit 9 at 1-2; *see* ASUMF ¶ 14; RSGI ¶ 14. IHS justified the extension through December 31 by recognizing the danger that "interrupted [ED] provider services at Pine Ridge Hospital" would create. AF Exhibit 6 at 1. In the contract modification effecting the

option exercise, IHS increased the estimated maximum value of the bridge contract from $5,469.990.85 to $10,939,981.70. AF Exhibit 9 at 1-2.

For the period of July 1 through December 31, 2024, Tribal Health submitted, and IHS timely paid in full, all invoices for services performed under the bridge contract. ASUMF ¶ 15; RSGI ¶ 15. IHS has never alleged any performance deficiency or questioned any Tribal Health invoice for that performance period. *Id.*

II. Planning for ED Services to Continue After December 31, 2024

In a decision dated November 27, 2024, the Court of Federal Claims dismissed Prime Physicians' protest as jurisdictionally barred. *Prime Physicians*, 174 Fed. Cl. at 197.

By December 26, 2024, IHS had just begun the process of attempting to issue a solicitation for a longer-term contract for ED services at Pine Ridge Hospital, and there was no pending award for those services. ASUMF ¶ 17; RSGI ¶ 17; Respondent's Response Brief (June 18, 2025) at 4. Accordingly, the IHS contracting officer sought internal IHS approval to issue a bridge contract—apparently, a new bridge contract—to Tribal Health for continued performance of ED services at the hospital and asked the IHS Competition Advocate to approve a deviation from the Buy Indian Act, 25 U.S.C. § 47 (2018), which otherwise would require her to give preference in any contract award to an Indian Economic Enterprise. AF Exhibit 11 at 1. Under the proposal, the bridge contract would have a base period of January 1 to March 31, 2025, an option to extend performance through the end of April 2025, and a second option to extend it through the end of May 2025. *Id.* In its deviation request memorandum, IHS recognized that delays in beginning the acquisition planning process meant that it would be several months before a new longer-term competitive contract could be in place. *Id.* Based on those delays, the IHS contracting officer believed that IHS should issue a new bridge contract to allow for ED services during the new procurement process:

> Issuing the 90-day bridge contract with options to Tribal Heath, LLC would be most cost effective and pose the least risk of uninterrupted ED services because Tribal Health, LLC providers have already been credentialed and privileged. The 90-day bridge contract to Tribal Health[,] LLC with two (1) one-month option periods that could total up to five (5) months is needed to ensure continuity of ED management and staffing. . . . To ensure ED Services are not impacted at [Pine Ridge Hospital], a bridge contract is required.

Id. On December 27, 2024, the IHS Competition Advocate concurred in and approved the deviation request. *Id.* at 3.

The IHS contracting officer then prepared a market research memorandum to support the JOFOC for the option exercise, which was provided to the contracting officer on December 30, 2024. *See* AF Exhibits 12, 13. Without referencing IHS's ability to exercise another option under the existing bridge contract, the memorandum described how IHS's only available mechanism for maintaining continuing ED services at Pine Ridge Hospital without interruption was to issue a new bridge contract:

> An interruption of services is unacceptable due to the critical nature of the agency's function being supported by this contract, that is the provision of emergency medical care to a population in an extremely rural location of the country. The intended bridge contract anticipates a 90-day period of performance from January 1, 2025 through March 31 2025 with two (2) one (1) month option periods, that could total five (5) months of services.
>
> . . . .
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> Tribal Health, LLC currently provides the required services under a contract that expires December 31, 2024. Tribal Health, LLC has vetted and credentialed staff of approximately 20 providers, 30 [registered nurses], and 8 [medical staff assistants] at the Pine Ridge Hospital who can assume full performance of contract services on January 1, 2025 without a need for any transition period. *This places Tribal Health, LLC in the unique position of being the only vendor capable of performing the scope of work and allowing for continuity of vital patient care services at Pine Ridge IHS Hospital while Schedule A [task order request for proposal] awards are issued*.
>
> *Any other option would pose an unacceptable risk of a lapse of services that would disrupt health care delivery for an already underserved population and would force the Pine Ridge Hospital ISH to place the ED on "diversion" status.* "Diversion" status means that the healthcare facility is closed, and patients presenting for medical care must be directed or "diverted" to other GPAIHS Service Units or non-Federal healthcare facilities which are generally located more than 100 miles away.

AF Exhibit 13 at 2-4 (emphasis added). In the memorandum, however, the IHS contracting officer indicated that "[t]he estimated dollar value [] for the base period plus two one month options is $6,079,095.00." *Id.* at 2. This dollar value estimate was less than the contract

pricing levels in the existing bridge contract. *See* AF Exhibit 1 at 2; Respondent's Response Brief at 5.

IHS did not share any of these internal memoranda or their contents with Tribal Health at that time.

III. The Contracting Officer's "Notice to Proceed"

At 6:34 p.m. Eastern Time on December 31, 2024, with less than six hours remaining in the bridge contract's performance period, the IHS contracting officer sent the following email, with the subject line "Notice to Proceed – ED Service Pine Ridge Hospital," to Tribal Health:

> To ensure there is no break in patient care services, a Notice to Proceed (NTP) is hereby issued to provide Emergency Department services with a not to exceed amount of $3,694,440.00 (IHS1507017); period of performance is 01/01/2025 to 03/31/2025. However, the award amount and period of performance may change due to the inclusion of two 1-month option periods. The Pine Ridge Hospital is covered under this Notice to Proceed.

AF Exhibit 15 at 1; *see* ASUMF ¶ 16; RSGI ¶ 16. We see nothing in the appeal file that explains where the contracting officer obtained the $3,694,440 figure identified in the email.

Tribal Health alleges that, because it had been providing the required services at Pine Ridge Hospital under the bridge contract since July 1, 2024, and because that contract gave IHS the option to extend the performance period for up to another six months beyond December 31, 2024, Tribal Health understood the NTP email "as being a continuation of services under the Contract," Complaint Exhibit 4 at 4, explaining as follows:

> In other words, the NTP email can only reasonably be interpreted as notice of an extension of the Contract's Period of Performance in accordance with FAR 52.217-8 or 52.217-9. Tribal Health was not performing under any other contract, nor was there any pending award for Emergency Department Management and Staffing Services at Pine Ridge Hospital. IHS had never raised the prospect of these services being provided under any undefinitized contract action or other procurement agreement distinct from the Contract.

Id. Nevertheless, because the NTP email identified a lower price for the required services than the bridge contract, Tribal Health sent the contracting officer an email on January 3, 2025, "confirm[ing] receipt of the [NTP] in connection with the urgent and compelling

Contract Award No. 75H70624C00020" but representing that, "[b]ased on the requested period of performance, we show the amount to provide the requested services as $5,350,750.53,"[2] not the $3,694,440 figure identified in the IHS contracting officer's December 31, 2024, email. AF Exhibit 17 at 1. Tribal Health reports that IHS did not respond to that email. ASUMF ¶ 20; *see* RSGI ¶ 20 (averring that IHS responded to the email two months later through actions that it took at that time but identifies no action before that date).

Tribal Health continued to perform at Pine Ridge Hospital, ensuring that there was no gap in patient care services. ASUMF ¶ 21; RSGI ¶ 21.

Soon thereafter, on January 6, 2025, Tribal Health requested information from the contracting officer's representative (COR) about when the contract extension would be effectuated in the Department of Treasury's Invoice Processing Platform (IPP), the system in which Tribal Health is required to submit all invoices for payment. AF Exhibit 18 at 1; *see* Complaint Exhibit 4 at 5-6; ASUMF ¶ 22; RSGI ¶ 22. Having received no response, it contacted the COR again on January 23, 2025, which resulted in a response notifying Tribal Health that, because "[t]he current period of performance was provided by the [NTP] . . . , you would not be able to bill for the services under Contract No. 75H70624C00020." Complaint Exhibit 4 at 6. The COR provided no instruction, though, on how Tribal Health was supposed to submit invoices for the work that it was performing, given that the IPP, which identified Tribal Health's contract as closed, was unavailable.

Unable to utilize the IPP, Tribal Health on January 23, 2025, began sending its invoices, which it generated on a weekly basis, directly to the COR. Complaint Exhibit 4 at 7; *see* RSGI ¶ 22 (acknowledging that Tribal Health submitted invoices to the COR). By the time that Tribal Health sent its fifth invoice on February 28, 2025, the invoice amounts totaled $2,459,184.42. Complaint Exhibit 4 at 7. The COR told Tribal Health that she had approved the invoices and forwarded them to the contracting officer for payment, but Tribal Health received no payments. ASUMF ¶ 24; RSGI ¶ 24. In weekly meetings throughout February and early March 2025, the COR repeatedly indicated that she had approved the invoices and did not know why Tribal Health had not been paid. Complaint Exhibit 4 at 8; ASUMF ¶ 24; RSGI ¶ 24.

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[2] The dollar figure that Tribal Health identified in its January 3, 2025, letter is slightly less than the $5,469,990.85 estimated maximum contract value for three months of ED services identified in the bridge contract.

Despite the lack of payment, Tribal Health continued to perform ED services at Pine Ridge Hospital to ensure that there was no lapse in patient care. ASUMF ¶ 25; RSGI ¶ 25.

IV. Issuance of a "Letter Contract" and Tribal Health's Certified Claim

Then, on March 4, 2025, the IHS contracting officer sent Tribal Health an "Award Notice" for Letter Contract No. 75H70625C00005 (the letter contract), with a retroactive effective date of January 1, 2025. AF Exhibits 19 at 1, 20 at 2; ASUMF ¶ 25; RSGI ¶ 25. The proposed letter contract covered the same staffing services that Tribal Health had been providing at Pine Ridge Hospital since January 1, 2025, but at lower rates than those contained in the bridge contract. ASUMF ¶¶ 26-27; RSGI ¶¶ 26-27. Although the bridge contract identified the estimated maximum value for three months of ED services as $5,469,990.85, AF Exhibit 1 at 1, three months of ED services under the letter contract (running from January 1 through March 31, 2025) were valued at a maximum of $3,694,440. AF Exhibit 20 at 1-2. The letter contract also contained two options that would allow IHS to extend the letter contract through April 30 and May 31, 2025, respectively, *id.* at 2, and it included the clause at FAR 52.217-8, "Option to Extend Services (NOV 1999)," which provides that "[t]he Government may require continued performance of any services within the limits and at the rates specified in the contract" so long as "the total extension of performance" does not exceed six months. *Id.* at 43. The letter contract was signed by the IHS contracting officer and, on the signature block page, contained a provision that read as follows:

> CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.

Id. at 1.

Citing the requirement in FAR 16.603-2(a) that letter contracts be used only when "negotiating a definitive contract is not possible in sufficient time to meet the [agency's] requirement," Tribal Health, asserting that a definitive bridge contract was already in place, declined to execute the letter contract. ASUMF ¶¶ 28-29; RSGI ¶¶ 28-29; RSUMF ¶ 12; ASGI ¶ 12.

On March 7, 2025, after payment on its invoices continued to be withheld, Tribal Health submitted a certified claim to the IHS contracting officer seeking "full payment on all invoices submitted to IHS under the terms of the Contract since January 1, 2025, plus

interest under the [Contract Disputes Act (CDA), 41 U.S.C. § 7109(a)(1)], and" the Prompt Payment Act (PPA), 31 U.S.C. § 3901. AF Exhibit 34 at 2; *see* ASUMF ¶ 30; RSGI ¶ 30. It asserted that the claim arose "in connection with the Agency's maladministration of its Contract, its refusal to make timely payments thereunder, and its attempt to unilaterally transfer the Contract services under an undefinitized Letter Contract with more favorable pricing terms to IHS" and that IHS's failure to pay Tribal Health's invoices was a material breach of contract. AF Exhibit 34 at 1-2. Tribal Health demanded payment in the sum certain of $2,459,184.42 (as of March 7); requested a decision from the contracting officer; and provided a certification consistent with FAR 33.207. *Id.* at 1.

On March 27, 2025, IHS invited Tribal Health to submit a price proposal to receive payment. AF Exhibit 29; RSUMF ¶ 16; ASGI ¶ 16.

On March 29, 2025, IHS sent Tribal Health an email attaching modification P00001 to the letter contract, which, on its face, said that it was self-executing and did not require Tribal Health's signature. AF Exhibits 21 at 1, 22 at 2. Under that modification, which added $1,103,065 to the letter contract price, performance of the still-unsigned letter contract would be extended through April 30, 2025. AF Exhibit 21 at 1. Tribal Health acknowledged receipt of the modification on April 1, 2025, but objected to IHS's attempt "to exercise an option under an invalid Letter Contract" and "respectfully refuse[d] to execute any modification to that effect." AF Exhibit 22 at 1. Nevertheless, it informed IHS that it "remain[ed] steadfast in its commitment to providing high-quality care to the patients [that it was] serv[ing]" and that it would "continue to perform [ED] services . . . under IHS Contract No. 75H70624C00020 and remain dedicated to ensuring uninterrupted patient care." *Id.*

Subsequently, on April 18, 2025, the IHS contracting officer asked Tribal Health to "provide a certified cost proposal," with certified cost or pricing data, to support the services covered by the unsigned letter contract, which would "assist [her] in providing a contracting officer's final decision" in response to the certified claim that Tribal Health had submitted on March 7, 2025. AF Exhibit 24 at 1; *see* ASUMF ¶¶ 32-33; RSGI ¶¶ 32-33. Tribal Health declined to provide certified cost or pricing data. ASUMF ¶ 34.

On April 30, 2025, IHS sent Tribal Health an email attaching modification P00002 to the letter contract, which, on its face, said that it was self-executing and did not require Tribal Health's signature. AF Exhibits 25 at 1, 26 at 1. Under that modification, which added $1,272,590 to the letter contract price, performance of the still-unsigned letter contract would be extended through May 31, 2025. AF Exhibit 25 at 1. On May 1, 2025, as it had done in response to modification P00001, Tribal Health acknowledged receipt of the

modification but objected to IHS's attempt "to exercise an option under an invalid Letter Contract." AF Exhibit 27 at 1.

On May 7, 2025, the IHS contracting officer emailed Tribal Health a letter notifying it that she "intend[ed] to issue a final decision" on the certified claim "no later than May 21, 2025." AF Exhibit 28 at 1. To date, no contracting officer's final decision has been issued.

Since then, the IHS contractor has continued to issue notices purporting to extend the length of the letter contract, even though Tribal Health has never signed that contract. On May 29, 2025, the contracting officer emailed a letter (AF Exhibit 31 at 1) notifying Tribal Health "of the Government's intent, in accordance with FAR 52.217-8[,] . . . to extend services" under the letter contract "until June 30, 2025," AF Exhibit 30 at 1, and, on May 30, 2025, provided Tribal Health with modification P00003, effectuating that intent. AF Exhibits 32 at 1, 33 at 1. The record does not indicate whether the contracting officer has extended the purported letter contract beyond June 30, 2025, but, to the best of the Board's knowledge, Tribal Health is still performing ED services at Pine Ridge Hospital.

V. Proceedings Before the Board

On May 8, 2025, based on the contracting officer's "deemed denial" of its March 7, 2025, certified claim, Tribal Health filed a notice of appeal with the Board. In its complaint, filed May 30, 2025, Tribal Health represented that, as of that date, "the aggregate balance of all invoices submitted to [the Department of Health and Human Services (HHS)] for services performed since [January 1, 2025,] is $7,028,400.86." Complaint (May 30, 2025) ¶ 35. IHS has not paid any of the invoices, even though it has never rejected any of them. Tribal Health alleges that, "[a]s a direct and proximate result of HHS's refusal to pay for these services, Tribal Health has been forced to incur additional costs and expenses to essentially finance staffing of the IHS Pine Ridge Emergency Department," including having to "increase its line of credit in order to cover payroll and other expenses for staff deployed on the Contract effort" which cost Tribal Health $10,504 in lending institution fees. *Id.* ¶ 36.

Tribal Health's complaint contains five counts, four of them (the counts alleging breach of contract, breach of the covenant of good faith and fair dealing, breach of an implied-in-fact contract, and quantum meruit) directly demanding the payment of money. In one of the five counts, Tribal Health seeks declaratory relief—specifically, a declaration that the letter contract is invalid and that all services which Tribal Health has been providing are governed by the terms of the previously awarded bridge contract. *See* Complaint ¶¶ 51-58.

After filing its complaint, Tribal Health filed a motion for immediate declaratory relief and an emergency status conference. It represented that this relief was needed to "provide certainty to the parties as to whether these payments are due under the [bridge] Contract . . . or whether they are due under the invalid Letter Contract" and "to address the ongoing financial and other harms Tribal Health continues to incur as a result of the conflicting positions between it and the Agency with respect to the applicability of the [bridge] Contract, as opposed to the invalid Letter Contract." Motion (May 30, 2025) at 2-3. Tribal Health asserted that "[t]his is a timely and emergent matter of contract interpretation, which cannot be delayed pending a full resolution of the claims at issue in this Appeal," because IHS had not paid Tribal Health "even a single dollar for the services performed" since January 1, 2025, and that all of Tribal Health's invoices were still pending, unpaid. *Id.* at 3, 6. It represented that, "[w]hile Tribal Health could suspend its performance as a result of IHS's non-payment, it is not an exaggeration to state that doing so would have *fatal* consequences," given that Pine Ridge "is the only hospital within hundreds of miles" and that IHS's "haphazard administration of the Contract makes clear that IHS does not have a contingency plan if Tribal Health does not perform these services." *Id.* at 6.

On June 6, 2025, following an earlier status conference with the parties, the Board issued an order indicating its belief that the basis of Tribal Health's motion for declaratory relief was more in the nature of a request for partial summary judgment on entitlement issues. The Board converted Tribal Health's motion to one for partial summary judgment and, because, under Board Rule 8(f)(1) (48 CFR 6101.8(f)(1)), any summary judgment motion must be accompanied by a statement of undisputed material facts, designated paragraphs 9 through 35 of Tribal Health's complaint as that statement. Recognizing that IHS had not yet had an opportunity to take discovery, the Board directed that, to the extent that IHS believed that it needed discovery to respond fully to the motion for partial summary judgment, it should provide an affidavit or declaration with its response consistent with Rule 56(d) of the Federal Rules of Civil Procedure (FRCP).

IHS responded to Tribal Health's motion and filed a cross-motion for summary judgment on June 18, 2025, and, on June 24, 2025, provided a statement of genuine issues and a statement of undisputed material facts. In those filings, IHS did not identify any need for or request discovery and did not provide any FRCP 56(d) affidavit or declaration. Tribal Health submitted its response and reply brief on June 27, 2025, along with a statement of genuine issues, and IHS filed its final reply brief on July 14, 2025.

Discussion

I. Jurisdiction

Although neither party raised it, we briefly address a jurisdictional issue that is evident from the record.

Under the CDA, a contracting officer's decision on a claim or failure timely to issue a decision is a prerequisite to the Board's jurisdiction. *Atlas Elevator Co. v. General Services Administration*, GSBCA 11655, 93-1 BCA ¶ 25,216, at 125,617 (1992). Under the CDA, once a contractor submits a claim seeking payment of more than $100,000, the contracting officer has sixty days to "issue a decision" or to "notify the contractor of the time within which a decision will be issued." 41 U.S.C. § 7103(f)(2). If, within that sixty-day window, the contracting officer properly extends the deadline for the decision, the contractor is precluded (unless it files a successful petition under 41 U.S.C. § 7103(f)(4) challenging the extended deadline) from filing an appeal until a decision is actually issued or the extended deadline has passed without decision. *See Hawk Contracting Group, LLC v. Department of Veterans Affairs*, CBCA 5527, 16-1 BCA ¶ 36,572, at 178,120; 41 U.S.C. § 7103(f)(5).

Tribal Health submitted the certified claim that provides the jurisdictional basis for this appeal to the IHS contracting officer on March 7, 2025. AF Exhibit 34 at 2; *see* ASUMF ¶ 30; RSGI ¶ 30. The sixty-day deadline for the contracting officer to issue a decision on that claim was May 6, 2025. On May 7, 2025, the day after the decision deadline had passed, the IHS contracting officer emailed Tribal Health a letter notifying it that she "intend[ed] to issue a final decision" on the certified claim "no later than May 21, 2025." AF Exhibit 28 at 1. Despite that email, Tribal Health filed its notice of appeal with the Board on May 7, 2025.

Had the contracting officer provided notice of the decision date extension within the sixty-day window that the CDA provides, Tribal Health's claim would not have been "deemed denied" until that extended deadline had passed without a decision, meaning that Tribal Health could not have filed an appeal prior to the extended deadline date. *See Hawk Contracting*, 16-1 BCA at 178,120. Nevertheless, because the deadline for extending the decision date was May 6, the claim was already "deemed denied" when the contracting officer purported to extend the decision deadline. With a "deemed denial" already in place, Tribal Health was entitled to file its notice of appeal, as it did, on May 7, 2025, and the Board possesses jurisdiction to entertain it. *See DAI Global, LLC v. Administrator of the United States Agency for International Development*, 945 F.3d 1196, 1199-1200 (Fed. Cir. 2019) (finding that the claim was already "deemed denied" when the contracting officer provided

notice after the sixty-day period had expired). In any event, even if the contracting officer's purported extension had effectively delayed the "deemed denial" date, "a premature appeal to the Board can ripen into maturity if the premature appeal is still pending when the contracting officer actually issues a decision or when the contracting officer's deadline for issuing the decision expires." *Primestar Construction v. Department of Homeland Security*, CBCA 5510, 17-1 BCA ¶ 36,612, at 178,330 (2016). Here, the contracting officer's identified May 21 decision date has passed without a decision, leaving no question that Tribal Health's claim is deemed denied and that any original defect in the Board's jurisdiction is cured.

II. Summary Judgment Standard of Review

IHS "does not contend, nor has it ever contended, that [Tribal Health] did not provide the services in the ED at Pine Ridge for [IHS] nor that it is not entitled to payment for such services." Respondent's Response Brief at 5. Despite that assertion, and despite Tribal Health's submission of invoices totaling more than $8 million, IHS has not paid Tribal Health *anything* for more than seven months of work at Pine Ridge. IHS asserts that it would make payment if only Tribal Health would acquiesce in IHS's demand that it execute the letter contract that IHS presented it (with discounted rates for ED service workers below what Tribal Health is paying its workers) and then provide IHS with certified cost and pricing data that IHS could audit. No matter what, IHS, if and when it eventually pays Tribal Health, does not plan on paying the hourly rates set forth in the parties' bridge contract executed in July 2024. Because of the severe financial impact of IHS's non-payment for more than seven months of ED services at Pine Ridge, which Tribal Health is still continuing to provide, Tribal Health filed an emergency motion for immediate declaratory relief, which we viewed as and converted into a motion for partial summary judgment. IHS has filed its own cross-motion for summary judgment in response.

"Summary judgment is only appropriate where there is no genuine issue of material fact." *Optimum Services, Inc. v. Department of the Interior*, CBCA 4968, 19-1 BCA ¶ 37,383, at 181,734, *aff'd*, 829 F. App'x 257 (Fed. Cir. 2020). Nevertheless, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "It is not the judge's function 'to weigh the evidence and determine the truth of the matter,"' *id.* (quoting *Anderson*, 477 U.S. at 249), and "[a]ll justifiable inferences and presumptions are to be resolved in favor of the nonmoving party." *Id*. "When both parties have moved for summary [judgment], as here, each party's motion will be evaluated on its own merits[,] and all justifiable inferences will be resolved against the party whose motion is under consideration." *SBBI, Inc. v. International Boundary & Water Commission*, CBCA 4994, 17-1 BCA ¶ 36,722, at 178,813-14.

We recognize that "early motions for summary judgment are disfavored." *Madden v. Amazon.com Services, LLC*, No. 1:23-cv-14163, 2024 WL 4885016, at *2 (N.D. Ill. Feb. 14, 2024). "A nonmovant may well be surprised by an early-filed summary-judgment motion," like the cross-motions that the Board is considering here, "but the timing of such a motion need not be a death knell: The Rules also iterate that relief—including discovery—may be obtained by a nonmovant who makes the required showing" under FRCP 56(d). *Jeffries v. Barr*, 965 F.3d 843, 848 (D.C. Cir. 2020); *see Burlington Northern Santa Fe Railroad Co. v. Assiniboine & Sioux Tribes of the Fort Peck Reservation*, 323 F.3d 767, 773 (9th Cir. 2003) ("Where . . . a summary judgment motion is filed so early in the litigation, before a party has had any realistic opportunity to pursue discovery relating to its theory of the case, district courts should grant any Rule [56(d)] motion fairly freely."). *But see Reflectone, Inc. v. Farrand Optical Co.*, 862 F.2d 841, 843-44 (11th Cir. 1989) (FRCP 56(d) does not create a blanket prohibition on granting summary judgment motions before discovery). We expressly reminded IHS of its ability to submit an affidavit or declaration under FCRP 56(d), which could have allowed it to defer summary judgment until after it had had an opportunity to take discovery, when we converted Tribal Health's motion for declaratory relief into a motion for partial summary judgment. Yet, in responding to that motion, IHS did not request or identify any need for discovery. In fact, IHS filed its own cross-motion for summary judgment, and Tribal Health, in its response to that cross-motion, did not request an opportunity for discovery. The Board's review of the parties' statements of undisputed material facts and statements of genuine issues evidences that the parties have no significant disagreements about the facts. Their disagreements relate to the legal effect of mostly undisputed facts. In such circumstances, despite the early stage of this appeal, consideration of the parties' cross-motions for summary judgment is appropriate.

III. The Effectiveness of IHS's "Letter Contract"

IHS argues that it "issued a Letter Contract attempting to memorialize the parties' relationship and to ensure that [Tribal Health] was paid" but that Tribal Health "refused to accept the Letter Contract." Respondent's Response Brief at 11. "A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately . . . performing services" even though pricing or some other contract term cannot yet be definitized. FAR 16.603-1. Despite IHS's acknowledgment that Tribal Health did not accept the letter contract, IHS argues that we should somehow give effect to its terms and require that, to be paid for ED services, Tribal Health must first submit certified cost data subject to audit, as contemplated by the letter contract.

There are several reasons that we could find that IHS's proposed letter contract is ineffective and not binding on Tribal Health. We could rely upon the IHS contracting officer's failure to recognize that, under FAR 16.603-2(a), a letter contract may be used only

when "negotiating a definitive contract is not possible in sufficient time to meet the [Government's] requirement." That is, the use of this type of contract is "limited to exigent circumstances" in which the Government *cannot* timely obtain services elsewhere through a definitized contract action. *Integrated Logistics Support Systems International, Inc. v. United States*, 47 Fed. Cl. 248, 258 (2000). Here, IHS had a definitively-priced bridge contract vehicle in place, with previously approved negotiated pricing, through which IHS could have continued Pine Ridge ED services after December 31, 2024. All that IHS had to do was exercise the available option in that bridge contract.[3] Applying the requirements of the FAR, the IHS contracting officer could not order services using an undefinitized "letter contract" vehicle to avoid using the existing definitized contract that it had in place.

Alternatively, we could find that the contracting officer's failure to obtain the necessary prerequisite approvals required by the FAR for a letter contract precludes the Government's ability to enforce it. FAR 16.603-3 provides that a "letter contract may be used only after the head of the contracting activity or a designee determines in writing that no other contract is suitable." Within HHS, the responsible agency here, "[a]n official one level above the contracting officer" must make that written determination. 48 CFR 316.603-3. In response to the Board's request that IHS include a copy of the written determination in the appeal file, IHS expressly acknowledged that no such determination has ever been made. *See* Respondent's Response to June 6, 2025, Order Regarding Content of Rule 4 Appeal File (June 9, 2025) at 1 ("The written determination by the head of the contracting activity or a designee required by [FAR] 16.603-3 before issuance of a letter contract does not exist."). Although it might be possible for an agency to remedy the absence of a pre-award written determination after the fact through some kind of internal ratification, *see Dresser Industries, Inc.—Reconsideration*, B-212937.2, 84-1 CPD ¶ 633, at 12 (June 18, 1984), IHS has made no effort to date to remedy the defect. IHS asserts that, because the contracting officer has a warrant of contracting authority and the letter contract has a link to an available appropriation, the letter contract award was fully authorized, *see* Respondent's Response Brief at 11-12, but FAR 1.602-1(b) provides that "[n]o contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met." No contracting officer has the authority to evade mandatory FAR requirements and limitations. *See Johnson Management Group CFC, Inc. v. Martinez*, 308 F.3d 1245,

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[3] As Tribal Health notes, *see* Appellant's Reply Brief (June 27, 2025) at 12, it seems odd that, in the market research memorandum supporting the JOFOC, the IHS contracting officer did not mention that there was an existing contract vehicle through which the Pine Ridge Hospital ED services could be obtained. *See* AF Exhibit 13 at 2-4. We do not know why that information was omitted from the memorandum.

1256-57 (Fed. Cir. 2002) (contracting officers lack authority to override mandatory FAR requirements and restrictions); *United States v. Amdahl Corp.*, 786 F.2d 387, 392 (Fed. Cir. 1986) ("Failure to follow the applicable rules negates the agent's authority to enter into a contract binding on the government." (citation omitted)); *First Division Design, LLC*, ASBCA 60049, 18-1 BCA ¶ 37,201, at 181,099 ("The failure of a contracting officer to comply with statutory [or regulatory] requirements in making an award can render the contract a nullity."). IHS's assertion that "nothing in the FAR . . . renders a letter contract illegal due to the absence of the [required] Determination," Respondent's Response Brief at 12, ignores the mandatory nature of the language that the FAR uses in imposing the written determination requirement.

Nevertheless, it is unnecessary to rely on these conflicts between the contracting officer's actions and the FAR because the letter contract is not binding on Tribal Health for an even more basic reason: Tribal Health never agreed to it. It is a basic proposition of contract law that, "[t]o establish the existence of a contract, whether express or implied-in-fact, [a party] must show: (1) that there was an unambiguous offer to contract, upon *specific* terms; (2) that there was an unambiguous acceptance of that offer; (3) that both parties intended to enter into a contract, often called mutuality of intent; and (4) that the United States received consideration." *Garza v. United States*, 34 Fed. Cl. 1, 14 (1995). "It is essential . . . that the acceptance of the offer be manifested by conduct that indicates assent to the proposed bargain." *Russell Corp. v. United States*, 537 F.2d 474, 482 (Ct. Cl. 1976). Further, that assent must be voluntary: "The element of obligation upon which a contract may be enforced springs primarily from the unrestrained mutual assent of the contracting parties, and where the assent of one to a contract is constrained and involuntary, he will not be held obligated or bound by it." *Textron Systems Corp. v. Barzan Aeronautical LLC*, No. 1:23-cv-02828-JRR, 2024 WL 4135425, at *9 (D. Md. Sept. 10, 2024) (quoting *Lloyd v. Niceta*, 255 Md. App. 663, 695 n.10 (2022), *aff'd*, 485 Md. 422 (2023)). A party cannot involuntarily impose a contract on another. *City of Cincinnati v. United States*, 153 F.3d 1375, 1377-78 (Fed. Cir. 1998); *see Alde, S.A. v. United States*, 28 Fed. Cl. 26, 32 (1993) (no contract arises from "compelled acquiescence").

Here, the first page of the letter contract that the IHS contracting officer signed and sent to Tribal Health expressly provided that Tribal Health was required to sign the document and return it to the contracting officer and that, by doing so, the contractor was agreeing to furnish and deliver the services required by the agreement at the prices set forth in the agreement. AF Exhibit 20 at 1. By sending the letter contract to Tribal Health for signature, IHS was making an offer that Tribal Health was entitled to accept or reject. *See* Restatement (Second) of Contracts § 24 (1981) (defining an offer as "the manifestation of willingness to enter into a bargain"). Not only did Tribal Health not sign the "letter contract," it communicated its express rejection of the offer. Because Tribal Health rejected the offer,

the letter contract never became effective. IHS's efforts involuntarily to impose the letter contract on Tribal Health must fail.

IV. IHS's Non-Exercise of the Option in the Bridge Contract

Tribal Health argues that the Board should interpret the IHS contracting officer's December 31, 2024, email, in which she told Tribal Health to proceed with ED services at Pine Ridge, as an effective exercise of an option in the bridge contract.

The bridge contract that the parties executed on July 2, 2024, contained two option provisions, incorporating the standard clauses at FAR 52.217-8 (allowing the Government to extend services by up to six months) and 52.217-9 (allowing the Government to extend the term of the contract for a total duration of no more than one year from the date of the July 1, 2024, award). AF Exhibit 1 at 51. In placing those clauses into the bridge contract, IHS indicated that any exercise of either option could be effected "by written notice to the Contractor within 30 days." *Id.*

Even if we could interpret the December 31, 2024, email as an attempt to exercise the bridge contract option, the IHS contracting officer did not send it until a few hours before the bridge contract was set to expire. Clearly, IHS did not comport with the thirty-day notice requirement set forth in the bridge contract. Further, in the email, the contracting officer identified a dollar ceiling for three months of upcoming services that was far less than what the bridge contract provided.

"For an option order to be effective, the Government must exercise the option in exact accord with the terms of the contract." *Freightliner Corp. v. Caldera*, 225 F.3d 1361, 1366 (Fed. Cir. 2000). "[A]n attempt to exercise an option outside its terms does not constitute a valid exercise of the option." *Alliant Techsystems, Inc. v. United States*, 178 F.3d 1260, 1275 (Fed. Cir. 1999). Here, there is no question that, even if the IHS contracting officer had purported to exercise the bridge contract's option period, the contracting officer's email, sent the evening that the bridge contract was supposed to expire, did not satisfy the option's thirty-day notice requirement. It also changed the dollar amount for the next three-month performance period from what the bridge contract specified, which the contracting officer cannot do in exercising an option absent contract language that would permit it. The contracting officer's December 31, 2024, email could not be interpreted as a valid option exercise that Tribal Health was obligated to accept.

That being said, because "the notice requirement included in the contracts protects the contractor," it "may be waived either expressly or through conduct by the contractor." *Independent Metal Strap Co.*, B-231756.2, 89-2 CPD ¶ 147, at 2 (Aug. 17, 1989). "[I]f a

contractor accepts the agency's exercise of its option, notwithstanding a failure by the agency to provide the required notice, a valid contract for the extended term exists." *Id.* That ability to waive defects in the option exercise does not assist Tribal Health here. Even though Tribal Health could waive IHS's failure to provide thirty days' notice of an option exercise, we are aware of no precedent that would allow a contractor to take the Government's modification of the payment terms required by an option and treat it as though the Government had exercised the option at the contractually-required amounts. At best, if Tribal Health truly interpreted the December 31, 2024, email as a belated exercise of the option, it could have accepted and agreed to continue performance at the reduced three-month $3,694,440 price identified in the email. It cannot validly argue, however, that, through an email authorizing payment of no more than $3,694,440 for the next three-month performance period, the IHS contracting officer effectively agreed to pay more than $5 million for that three-month period (as an option exercise under the written bridge contract would have allowed).

The only possible argument that Tribal Health has for insisting that the December 31, 2024, email should be treated as an exercise of the bridge contract option is that, very soon after receiving the email, it wrote the contracting officer to state that it viewed the email as an option exercise and that it would treat the incorrect dollar amount as a clerical error. *See* AF Exhibit 17 at 1. There is no dispute that IHS did not respond to Tribal Health's written response for more than two months, during which time Tribal Health continued to provide ED services at Pine Ridge. *See* ASUMF ¶ 20; RSGI ¶ 20. Tribal Health was also in communication with the COR during this period of time, who repeatedly informed Tribal Health that she had forwarded its invoices for payment and did not know why they were not being paid. It was not until March 4, 2025, that the IHS contracting officer sent Tribal Health the draft "letter contract," evidencing that IHS did *not* believe that it had extended the bridge contract. Although it is possible that factual evidence could be discovered to show that, between January and March 2025, IHS somehow internally ratified Tribal Health's belief that it was working under an exercise of a bridge contract option, *see Crowley Logistics, Inc. v. Department of Homeland Security*, CBCA 6188, et al., 20-1 BCA ¶ 37,579, at 182,473-76 (discussing the extent to which silence in response to a contractor's known but mistaken understanding of contract actions can constitute ratification when the Government allows the contractor to continue performance but does not correct the misunderstanding), the record evidence at this time is woefully inadequate to allow for any such determination. Neither party has taken discovery in this appeal, and the record is devoid of evidence regarding IHS's internal deliberations between January and early March 2025 that could affect this issue. On summary judgment, we cannot find any ratification of Tribal Health's belief that the bridge contract remained in effect after December 31, 2024. Nevertheless, our resolution below of Tribal Health's entitlement to relief in quantum meruit renders a decision on this issue unnecessary.

V. Quantum Meruit Relief

Because Tribal Health never agreed to the letter contract, and because we cannot find that the IHS contracting officer ever exercised the option to extend the bridge contract beyond December 31, 2024, we are left with a contractor that has been performing millions of dollars in essential services since January 1, 2025, without a contract in place.

"No one would deny that ordinary principles of equity and justice preclude the United States from retaining the services, materials, and benefits [of a contractor's work] and at the same time refusing to pay for them." *Prestex Inc. v. United States*, 320 F.2d 367, 373 (Ct. Cl. 1963). In situations in which a contractor provides services outside the context of an express written contract at the insistence of an authorized Government official, "an implied contract ar[i]se[s]" that requires the Government "to pay reasonable compensation." *Pacific Maritime Ass'n v. United States*, 108 F. Supp. 603, 607 (Ct. Cl. 1952); *see Prestex*, 320 F.2d at 373 ("[I]t is only fair and just that the Government pay for goods delivered or services rendered and accepted under it."); 38 Comp. Gen. 38, 43 (1958) (It is a "general rule of law that the Government, like any municipal body, may become obligated upon an implied contract to pay the reasonable value of the benefits accepted or appropriated by it as to which the United States has the general power to contract."). Many quantum meruit claims arise out of contracts implied in law, "where there is no express agreement between the parties but one is imposed in the interest of justice." *Honeywell International, Inc.*, ASBCA 57779, 15-1 BCA ¶ 36,121, at 176,339; *see International Data Products Corp. v. United States*, 492 F.3d 1317, 1325-26 (Fed. Cir. 2007). The Board lacks jurisdiction over claims arising under implied-in-law contracts. *Flux Resources, Inc. v. Department of Energy*, CBCA 6208, 19-1 BCA ¶ 37,338, at 181,589. Nevertheless, an implied-in-fact contract allowing for recovery in quantum meruit will be found to have arisen where "the Government bargained for, agreed to pay for, and accepted" services from the contractor. *Urban Data Systems, Inc. v. United States*, 699 F.2d 1147, 1154 (Fed. Cir. 1983). The Board possesses jurisdiction to consider claims arising under implied-in-fact contracts. *Academy Partners, Inc. v. Department of Labor*, CBCA 4947, 16-1 BCA ¶ 36,463, at 177,684-85.

Some tribunals have held that "the exception to the traditional rule to refer to . . . quantum meruit claims as implied-in-law claims requires that at some point there was an attempted express contract between the government and the [contractor]." *Threshold Technologies, Inc. v. United States*, 117 Fed. Cl. 681, 711 (2014) (citing cases). To the extent that such a requirement exists, the parties here had an express written contract in place (the bridge contract). While purporting to let that contract expire, the IHS contracting officer directed Tribal Health to continue performing the same work as that required by the bridge contract with a promise to pay (albeit at a potentially lower price than what the express contract would have required but subject to upward revision if Tribal Health submitted

certified cost data). This situation is very similar to that in *Cities Service Gas Co. v. United States*, 500 F.2d 448 (Ct. Cl. 1974), in which the contractor had two longstanding contracts with the Department of the Army for the sale and delivery of gas. After the contracts terminated, "the parties negotiated with each other for continued sales and purchases," exchanging letters "in which [the contractor] stated it would continue to sell and deliver gas . . . even though there was no written contract," and "[t]he Army not only agreed to accept the deliveries of the gas, but also demanded that the [contractor] continue to make the sales and deliveries." *Id.* at 452. "Following this exchange of letters, the [contractor] continued to make the sales and deliveries of gas to the Army . . . as it had done under the written contracts and has continued to do so up to the present time; and the Army has accepted the gas deliveries." *Id.* The Court of Claims determined that, in such circumstances, "a contract implied in fact" arose out of "a 'meeting of the minds' of the parties that the plaintiff would sell and deliver the gas to the Army . . . and the Army would purchase and accept delivery of the gas and pay plaintiff [a reasonable value] for it." *Id.*; *see Pacific Maritime*, 108 F. Supp. at 607 (where a written contract was drafted but never signed by one of the parties, such that "no express contract was entered into," an implied-in-fact contract "arose to pay reasonable compensation" where the agency "continued to request and to receive the [contractor's] services"). Consistent with *Cities Service*, an implied-in-fact contract between Tribal Health and IHS arose, through a meeting of the minds, requiring IHS to compensate Tribal Health for the reasonable value of the ED services that Tribal Health has been providing.

Where a contractor has provided services at the Government's direction under an implied-in-fact contract for a price on which the parties cannot agree, the "contractor may recover at least on a . . . *quantum meruit* basis for the value of the conforming . . . services received by the government." *Amdahl Corp.*, 786 F.2d at 393. "[V]alue determined on a quantum meruit basis under an implied in fact contract is not based on costs nor a reasonable return on investment of the seller, but on the reasonable value in the marketplace of the property sold" or the services provided. *Cities Service*, 500 F.2d at 457; *see Alternatives Unlimited, Inc. v. New Baltimore City Board of School Commissioners*, 843 A.2d 252, 293 (Md. App. 2004) ("Any award in [a quantum meruit case] is not for damages, but for restitution. It is measured not by any loss suffered by the plaintiff, but by the gain or enrichment unjustly conferred on the defendant."). Accordingly, "the amount of recovery by the contractor under this theory is limited to the value of the benefits *to the government*." *Amdahl Corp.*, 786 F.2d at 393. That "reasonable value" to the Government of the services received can be measured "in terms of what it would have cost [the Government] to obtain [those services] from a person in the claimant's position." Restatement (Second) of Contracts § 371(a).

The undisputed facts in this case establish that, absent performance by Tribal Health, IHS could not have obtained ED services at the Pine Ridge facility after December 31, 2024. Tribal Health was the only source qualified and capable of performing the work, and IHS had no other option than to hire Tribal Health. The only contract vehicle that IHS had available to it that would *require* Tribal Health to perform was the bridge contract. Exercise of the option under that contract would have required IHS to pay the negotiated prices that were contained in that contract. Often, "[n]o better answer [to the question of fair compensation] can be given than what the parties agreed upon." *Urban Data Systems*, 699 F.2d at 1155-56 (quoting *Pacific Maritime*, 108 F. Supp. at 607). In this particular case, not only do the prices in the bridge contract reflect the parties' prior agreement on price, they reflect what IHS would have had to have paid to get a contract in place for continuing ED services at Pine Ridge after January 1, 2025. Given that IHS had no other option for ensuring ED services at Pine Ridge, the "reasonable value" that IHS would have had to pay in the open marketplace (a marketplace of one) to keep ED services at Pine Ridge running was the price schedule in the bridge contract. Tribal Health is entitled to quantum meruit compensation consistent with that price schedule.

Citing to the Court of Claims' decision in *Yosemite Park & Curry Co. v. United States*, 582 F.2d 552 (Ct. Cl. 1978), IHS argues that, even though quantum meruit is measured by the reasonable value to the party receiving the benefit of the services, the contractor "cannot recover more than it spent," Respondent's Response Brief at 13, meaning that Tribal Health will still need to submit certified cost data to establish its costs before it can recover payment for the seven months of services that it has been providing. IHS has misinterpreted *Yosemite Park*. In that case, the National Park Service (NPS) had entered into a concession contract through which the concessionaire was to provide lodging, food, and beverage services at Yosemite National Park (Yosemite). *Yosemite Park*, 582 F.2d at 554. After executing the contract, NPS banned automobiles from Yosemite, and, through a contract modification, the concessionaire agreed to provide bus service within Yosemite without charge to the public in exchange for reimbursement by NPS of its actual bus service expenses plus a reasonable profit. *Id.* In the contract modification, the parties agreed that the contractor could treat its federal income taxes as a reimbursable fixed cost and that its annual operating fee would be calculated as twelve-and-a-half percent of its average gross investment in transportation equipment. *Id.*

Four years later, as the result of an audit, NPS realized that the provision in the modification allowing the contractor a twelve-and-a-half-percent cost recovery violated 41 U.S.C. § 254(b) (1970), which provided that, "in the case of a cost-plus-a-fixed-fee contract[,] the fee shall not exceed 10 percent of the estimated cost of the contract" and that the provision allowing the contractor to treat its federal income tax payments as reimbursable fixed costs violated a then-existing regulation. *Yosemite Park*, 582 F.2d at 555. The Court

of Claims determined that those provisions were inherently illegal and, therefore, unenforceable. *Id.* at 559-60. It found, though, that, because NPS "bargained for, agreed to pay for, and received the benefit of [the concessionaire's] services as both an owner and an operator of the transportation equipment in question over [a] four-year period," the contractor was "entitled to a quantum meruit recovery for the reasonable value of the services received by [NPS]." *Id.* at 560. Nevertheless, in light of the fact that only two provisions of an otherwise enforceable contract were illegal and because of the nature of the cost-plus-fixed-fee contract structure, the Court directed the trial judge on remand to view NPS as not having "assented to payment of more than 10 percent of the total costs of [the contractor's] performance of the contract nor to reimbursement of federal income taxes," *id.* at 561, and that "[t]he amount of [the contractor's "reasonable value"] recovery [was] to be limited accordingly." *Id.* That is, the Court directed that the contractor recover "the value [to the Government] of services rendered both in providing the equipment . . . and in operating that equipment . . . not [to] exceed" the contractor's entire provable costs plus ten percent. *Id.*

The reason that the amount of the contractor's actual incurred costs was relevant in *Yosemite Park* was because of the nature of the cost-plus-fixed-fee contract under which the contractor was performing, which the Court did not declare, in and of itself, illegal. That contract remained in place and enforceable. Only the two provisions within the established contract allowing for a twelve-and-a-half-percent cost fee and for tax payment reimbursement were declared illegal and unenforceable, effectively requiring what appears to be somewhat of a reformation of the contract's terms. Had the Court allowed the contractor to recover the full reasonable value of its services to NPS under its cost-plus-fixed-fee contract without regard to the costs or expenses the contractor had actually incurred, it would have read out of the enforceable part of the contract the tie between contractor costs and contractor recovery and, further, would potentially have allowed for a new violation of the statutory ten-percent limitation on cost recovery in cost-plus-fixed-fee contracts.

The situation here is nothing like that in *Yosemite Park*. Tribal Health is not operating under a cost-plus-fixed-fee contract. In fact, it is currently operating without an express contract at all. Under regular quantum meruit principles, Tribal Health is entitled to recover the reasonable value *to the Government* of the services that it has been providing, without regard to statutory cost ceilings.[4] The undisputed evidence in this case establishes that, when the IHS contracting officer directed Tribal Health to continue performing services after December 31, 2024, the only way that IHS could have obtained continuing ED services at Pine Ridge, other than by telling Tribal Health just to keep working, would have been to

[4] If there are any specific statutory limits on IHS's ability to pay for ED services at Pine Ridge, outside of the need for an available appropriation, IHS has not identified them.

exercise the option in Tribal Health's bridge contract. IHS admits that Tribal Health was the only vendor that could provide the services. Accordingly, the only substitute that IHS had available to it, had Tribal Health refused the contracting officer's direction to keep performing without an express written contract, would have been to exercise the option in the bridge contract and to pay the prices set forth in that contract. That is the reasonable value to the Government of the services that Tribal Health has been providing because that is "what it would have cost [IHS] to obtain [the services] from a person in the claimant's position." Restatement (Second) of Contracts § 371(a).

The rule that IHS wants us to adopt—that a quantum meruit recovery can never be higher than the costs that the contractor incurs—would not only conflict with a reasonable value analysis but would also create perverse incentives for contracting officers to avoid exercising options to extend contracts if they do not like the existing pricing. Instead of exercising options, contracting officers could, at the last minute, simply direct contractors to keep performing, then require the contractors to submit certified cost or pricing data if they wanted to be paid, and possibly force the contractors to accept payment of lesser amounts if they could not establish, to the contracting officer's satisfaction, that their incurred costs were reasonable. If a contracting officer has concerns that the agency is paying too much under an awarded contract, the proper approach is for the contracting officer to issue a new solicitation seeking competition for a new contract. Under IHS's proposed rule, contracting officers would not need to do that—they instead could just wait until the last minute (when it is too late to recompete the project), tell the contractor to keep working, but then pay only what the contracting officer decides is warranted. We refuse to adopt a rule that would encourage contracting officers to vitiate traditional competitive government contracting award processes and disrespect the results of negotiated contract actions between the parties.

In this case, Tribal Health is entitled to quantum meruit payment for ED services at the prices set forth in its bridge contract. Other than telling Tribal Health just to keep working, IHS could have obtained ED services at Pine Ridge after December 31, 2024, only by exercising the option in the bridge contract—the undisputed evidence in this case shows that there was no alternative. Accordingly, absent the direction that it gave Tribal Health to keep working, it would have had to pay the bridge contract prices, making that the "reasonable value" of the services that Tribal Health has been providing since January 1. Further, as noted above, IHS "does not contend, nor has it ever contended, that [Tribal Health] did not provide the services in the ED at Pine Ridge for [IHS] nor that it is not entitled to payment for such services." Respondent's Response Brief at 5. Tribal Health is entitled to payment at the bridge contract rates and is not obligated to prove its costs to IHS through the submission of certified cost data prior to being paid.

Decision

For the foregoing reasons, the Board grants Tribal Health's motion for partial summary judgment and denies IHS's cross-motion for summary judgment. Even though IHS did not (on the record currently before us) exercise the option in the bridge contract, the labor hour rates and prices upon which that contract is based represent the "reasonable value" to IHS of the services that Tribal Health has been providing at Pine Ridge since January 1, 2025. Tribal Health is entitled to payment for the services that it has provided at those rates and prices. The Board will schedule further proceedings to address quantum and Tribal Health's demands for interest on its unpaid invoices under the PPA and reimbursement of loan financing expenses by separate order.

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

We concur:

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

Elizabeth W. Newsom
ELIZABETH W. NEWSOM
Board Judge