UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: April 8, 2026

CBCA 8601

CAPITAL FM (PVT.) LTD,

Appellant,

v.

AGENCY FOR GLOBAL MEDIA,

Respondent.

Kamran Jamil Khawaja, Country Manager of Capital FM (Pvt.) Ltd, Islamabad, Pakistan, appearing for Appellant.

Anna K. Drake and Jennifer DeMaster, Office of General Counsel, Agency for Global Media, Washington, DC, counsel for Respondent.

SULLIVAN, Board Judge.

Capital FM (Pvt.) Ltd (Capital FM) appealed the deemed denial of its claim for costs following the termination for convenience of its contract with the Agency for Global Media (AGM or USAGM). Capital FM elected to proceed under the Board's expedited procedure for small claims. Rule 52 (48 CFR 6101.52 (2024)).[1] Capital FM asserts that the termination of its contract constitutes an abuse of discretion and that it is entitled to costs totaling

[1] Decisions issued under the Board's small claims procedure are final and conclusive and shall not be set aside except in cases of fraud affecting the Board's proceedings. Rule 52(b); *see Palmer v. Barram*, 184 F.3d 1373 (Fed. Cir. 1999); 41 U.S.C. § 7106(b) (2018). This decision has no value as precedent.

$55,200, as a result of the termination. We grant the appeal in part, finding that Capital FM has proved that its severance costs resulted from the breach. Capital FM's allegations regarding the abuse of discretion are without merit. The other damages that Capital FM seeks are not recoverable.

Background

I. Contract and Its Terms

In September 2024, the parties executed a contract that established Capital FM as a licensed distributor of programming content created by AGM. Exhibit 1 at 6.[2] The term of the contract was one year, with an option for an additional year.[3] *Id*. at 4. The contract provided that Capital FM would be paid $7200 per month. *Id*. The contract set forth the times at which the AGM-provided content would be broadcast. *Id*. at 10. The contract permitted Capital FM to transmit advertising and announcements before or after the AGM-provided content. *Id*. at 8.

The contract incorporated by reference a Federal Acquisition Regulation (FAR) clause titled Contract Terms and Conditions—Commercial Products and Commercial Services, Exhibit 1 at 1, which permitted AGM to terminate the contract for "its sole convenience." FAR 52.212-4(l) (48 CFR 52.212-4(l) (2024)). The contract also contained a termination provision that allowed AGM to terminate the contract with thirty days' notice:

> This agreement shall be in place for a total of 2 year(s), unless terminated earlier by either Party by written notice received by the other Party at least thirty (30) days before this Agreement's expiration date. . . . If this agreement is terminated before its completion date, USAGM will be liable only for the payments under ARTICLE VII of this Agreement for services rendered before the effective termination date.

Exhibit 1 at 8. Article VII provided for monthly payments of $7200. *Id*. at 4, 7. The contract provided that, in the event of a dispute, neither party would be liable for indirect or consequential damages:

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[2] "Exhibit X at X" refers to the exhibits in the appeal file. AGM submitted numbered exhibits, and Capital FM submitted lettered exhibits.

[3] Capital FM, in its briefing, insists that the contract term was two years. Pursuant to the terms of the contract, the term would be two years "if all option periods are exercised." Exhibit 1 at 8.

> In no event shall either Party be liable to the other Party for any incidental, indirect, consequential, or special damages, loss of good will or business profits, work stoppage, or for exemplary or punitive damages arising out of or relating to this Agreement, regardless of whether such Party had been advised of the possibility of such damages.

Id. at 8. The contract also provided that AGM "shall not be responsible for any obligations, responsibilities, or liabilities not specifically listed herein." *Id*. at 7.

II. Events Leading to the Dispute

On March 15, 2025, AGM stopped providing content to Capital FM. On March 17 and 20, Capital FM received cancellation notices from two firms that had contracted for advertising during the time of the AGM broadcasts. Exhibits K, L.

On May 15, 2025, AGM provided Capital FM with a termination notice advising that, pursuant to FAR 52.212-4(l), the contract was terminated immediately. Exhibit B. On May 20, 2025, AGM revised the notice to advise Capital FM that, pursuant to the termination provisions of the contract, its contract would be terminated as of 11:59 p.m. on June 14, 2025. Exhibit C. In both notices, AGM stated that it had determined that the services were no longer needed. Exhibits B, C. AGM paid Capital FM for its services through June 14, 2025. Respondent's Response Brief at 3 (citing Exhibit 38).[4]

In June 2025, Capital FM terminated eight employees who had been responsible for work pursuant to the AGM contract. Exhibit N. In the termination notices, Capital FM advised the employees that it would pay severance as required by the terms of each employee's contract. *See*, *e.g.*, Exhibit 28.

In July 2025, Capital FM submitted a settlement proposal to AGM, seeking payment of $65,200 for three categories of damages:

> $25,200 Unabsorbed Airtime Costs - Compensation for 3 months 15 days (June-Sept 2025) at $7,200/month. Prime airtime slots (contracted through Sept 2026) cannot be remarketed until Q4 2025 due to advance media commitments.

[4] Capital FM does not dispute that it has been paid its contract rate through June 14, 2025.

$30,000	Business Interruption Losses - Direct losses from [AGM's] cessation of material without notice on March 15, 2025 ($10,000/month for March-May 2025). This caused demonstrable listener attrition and reputational harm.[5]
$10,000	Employee Severance Costs - Documented termination costs for dedicated staff hired exclusively for [AGM] programming.

Exhibit D at 1-2. On September 1, 2025, Capital FM notified AGM that it considered its July 2025 submission to be a claim. Exhibit F. On September 22, 2025, Capital FM filed its appeal with the Board.[6]

Discussion

I. The Termination Decision Did Not Constitute An Abuse of Discretion

The contracting officer may terminate a contract for convenience without cause whenever it is determined to be in the Government's best interest. FAR 52.212-4(l) ("The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience."); *see Corners and Edges, Inc. v. Department of Health & Human Services*, CBCA 693, et al., 08-2 BCA ¶ 33,961, at 168,022 ("The termination for convenience clause grants the contracting officer exceptional authority."). A termination for convenience will only be a breach of contract if "the tribunal finds that the termination was motivated by bad faith or constituted an abuse of discretion, or that the Government entered into the contract with no intention of fulfilling its promises." *Greenlee Construction, Inc. v. General Services Administration*, CBCA 415, et al., 07-2 BCA ¶ 33,619, at 166,510. "In the absence of bad faith or clear abuse of discretion, the contracting officer's election to terminate for the government's convenience is conclusive." *T&M Distributors, Inc. v. United States*, 185 F.3d 1279, 1283 (Fed. Cir. 1999).

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[5] In proceedings before the Board, Capital FM has reduced the amount that it seeks for this category to $20,000. Joint Status Report at 3.

[6] Upon receiving Capital FM's notice of appeal, the Board issued a show cause order regarding the Board's jurisdiction to decide the appeal. In an order dated November 6, 2025, following the parties' responses to the show cause order, the Board determined that although Capital FM filed its appeal of its September 1, 2025, claim prior to the expiration of the sixty days for the contracting officer to issue a decision, 41 U.S.C. § 7103(f)(1), the sixty-day period expired on October 31, 2025, which allowed Capital FM's appeal to proceed on a deemed denied basis.

Capital FM argues that the termination constitutes an abuse of discretion because the agency (1) improperly relied upon FAR 52.212-4(l); (2) did not follow the requirements of the contract; and (3) issued a corrected termination notice, sent weeks after AGM had stopped providing Capital FM with content, as an "after the fact justification" for the termination.

Capital FM argues that AGM improperly relied upon FAR 52.212-4(l) in its first termination notice because, based upon a decision of the United States Court of Appeals for the Federal Circuit, that clause does not apply to service contracts. Capital FM relies upon the decision in *JKB Solutions and Services, LLC v. United States*, 18 F.4th 704 (Fed. Cir. 2021), in which the court found that the clause did not apply to a contract for instructional services to teach government contracts courses. 18 F.4th at 710-11. In subsequent decisions, the Board has clarified that the Federal Circuit's decision in *JKB Solutions* is predicated upon the court's finding that the services at issue in that case were not commercial services and that the clause, as then written, properly applied to commercial services. *Adventus Technologies, Inc. v. Department of Agriculture*, CBCA 7283, 23-1 BCA ¶ 38,392, at 186,542; *Heroes Hire LLC v. Department of Veterans Affairs*, CBCA 7195, et al., 22-1 BCA ¶ 38,101, at 185,039-40.[7] However, we need not rely upon this analysis because, just after the decision in *JKB Solutions* was issued, the language of FAR 52.212-4 was amended to clarify that the clause applies to both commercial products and commercial services. 86 Fed. Reg. 61017 (Nov. 4, 2021). This revised version of the clause was incorporated by reference into Capital FM's contract. AGM properly relied upon that clause as the basis for its termination decision.

Capital FM also asserts that AGM violated the requirements of the termination provision in the contract because AGM terminated the contract sixteen months before it was permitted to terminate pursuant to this provision. The relevant language of the termination clause states, "This agreement shall be in place for a total of 2 year(s), unless terminated earlier by either Party by written notice received by the other Party at least thirty (30) days before this Agreement's expiration date." Capital FM asserts that, pursuant to this language, AGM was not permitted to terminate until August 2026, thirty days before the end of the second year of the contract. As noted above, the contract term was one year, not two, with an option to extend for one option year. The language regarding "at least thirty (30) days" means that a party can seek to terminate at any time prior to the last thirty days of the contract. This interpretation gives meaning to the phrase "at least." Capital FM's

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[7] Capital FM has not alleged that the broadcast services it provided were not commercial services. In fact, in support of its claim for damages, Capital FM argues that its business is akin to commercial media outlets in the United States.

interpretation that AGM could not terminate until August 2026 does not make sense because, if the agency were not able to terminate before the last thirty days of the contract, there would be no need for a termination provision. The contract simply would end thirty days later. AGM properly followed the contract termination clause and gave Capital FM thirty days' notice of its termination, effective at 11:59 p.m. on June 14, 2025.

Finally, Capital FM asserts that the agency's issuance of conflicting termination notices, and the issuance of those notices after it had stopped providing content, constitutes an abuse of discretion. AGM's stated reason for termination was that it had determined that it no longer needed the services. Capital FM made no argument and presented no evidence suggesting that this stated reason was untrue. *See J.R. Mannes Government Services Corp. v. Department of Justice*, CBCA 5638, 17-1 BCA ¶ 36,911, at 179,842 (contractor failed to identify any conduct that showed bad faith or an abuse of discretion). There is no evidence that AGM has sought to obtain these services from another contractor or at a cheaper price than it paid Capital FM. While AGM has not explained why it stopped providing content in March but waited until May to issue the termination notices, that conduct does not constitute an abuse of discretion.[8]

II. Severance Costs Are the Only Costs Resulting From the Termination

Capital FM seeks three categories of damages: unabsorbed airtime, business interruption losses, and severance costs. FAR 52.212-4(l) requires that Capital FM show that the costs are reasonable and result from the termination of the contract:

> Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination.

FAR 52.212-4(l). "A contractor may not recover anticipatory profits or consequential damages when a contract has been properly terminated for convenience." *Universal Home*

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[8] Capital FM also alleges that AGM's conduct rendered the contract promises illusory, citing *Torncello v. United States*, 681 F.2d 756 (Ct. Cl. 1982). As the Federal Circuit explained in *Krygoski Construction Co. v. United States*, 94 F.3d 1537 (Fed. Cir. 1996), "*Torncello* applies only when the Government enters a contract with no intention of fulfilling its promises." 94 F.3d at 1545. AGM's payment of contract fees for services through June 2025 undercuts this allegation.

Health and Industrial Supplies, Inc. v. Department of Veterans Affairs, CBCA 4012, et al., 16-1 BCA ¶ 36,370, at 177,285 (citing *Arbor III Realty Co., Inc.*, HUD BCA 96-C-114-C5, 98-1 BCA ¶ 29,344, at 145,901 (1997)).

Capital FM seeks the monthly cost of the contract from mid-June through the end of September for what it described in its complaint as "non-cancelable, pre-committed media slots." Complaint at 8. Capital FM asserts, based upon common media practice, that it could not resell the time left open by AGM's cancellation until after September. However, if we were to award damages on this basis, the claim would vitiate the termination clause in the contract, which allowed termination at any time with thirty days' notice. If the media practice is to sell slots in advance, the contract should have provided for a longer notice period. Pursuant to the terms of the contract and FAR 52.212-4(l), AGM was obligated to pay the contract costs through June 14, 2025, which it did. Capital FM is not entitled to payment for time beyond that date.

Capital FM's claims for business interruption losses are claims for consequential damages. Consequential damages are caused by the loss of "other independent and collateral undertakings, although entered into in consequence and on the faith of the principal contract." *Ramsey v. United States*, 121 Ct. Cl. 426, 435 (1951); *see Land Movers, Inc.*, ENG BCA 5656, 91-1 BCA ¶ 23,317, at 116,931 ("[A] significant distinction is made between extra costs and profit relating to the contract at issue and extra costs, damages, or profits relating to other contracts or work.").[9] The unabsorbed airtime equates to the costs of the loss of the ads that were cancelled when AGM stopped delivering content. While the contract allowed Capital FM to sell advertising slots around the broadcast of the AGM content, the revenues from these ads are a collateral undertaking and not a direct result of the contract. Even though AGM may have been aware of these ad contracts, the contract precludes recovery of such consequential damages "regardless of whether such Party had been advised of the possibility of such damages."

Capital FM seeks to recover the severance costs it paid to personnel who were terminated following the termination of the contract. The FAR provides that severance costs

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[9] Capital FM urges the Board to allow the recovery of these damages based upon the decision in *Penncro Associates, Inc. v. Sprint Spectrum, L.P.*, 499 F.3d 1151 (10th Cir. 2007), in which the court found that the contract at issue in that case did not bar the recovery of lost profits as damages. This decision, from an appellate court different than our own, does not alter the long-standing precedent in government contract interpretation that losses from collateral undertakings are not recoverable as damages from a termination for convenience.

are recoverable if the contractor can show a legal obligation to pay severance, arising from a law or employment contract. FAR 31.205-6(g)(2). Capital FM explained that these personnel were hired specifically to work on the AGM contract and provided evidence that it paid severance costs pursuant to each employee's employment contract. Capital FM established that the severance costs were costs that resulted from the contract termination.

Decision

The appeal is **GRANTED IN PART**. The agency shall pay Capital FM $10,000 for employee severance costs, plus interest calculated from September 1, 2025 (the date upon which Capital FM submitted its claim to the contracting officer), as authorized by the Contract Disputes Act, 41 U.S.C. § 7109.

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge