ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -	)	
	)	
Visionary Construction, Inc. dba Visionary Services	)	ASBCA No. 64426
	)	
Under Contract No. N40085-25-C-2500	)	

APPEARANCE FOR THE APPELLANT: Ms. Tasha Reid
Atlanta, GA

APPEARANCES FOR THE GOVERNMENT: Tracey R. Rockenbach, Esq.
Acting Navy Chief Trial Attorney
Howard A. Smith, Esq.
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Trial Attorneys

OPINION ON THE GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT BY ADMINISTRATIVE JUDGE OSTERHOUT

This appeal involves a contract for Visionary Construction, Inc. (Visionary or appellant) to perform parking garage repairs for Building 7401 at Great Lakes Naval Base in Illinois. Visionary alleges that the United States Navy (the Navy or the government) wrongfully terminated the contract for default and seeks to have the termination converted into a termination for convenience. The Navy moves for summary judgment, asserting that the default termination was proper because Visionary failed to timely secure contractually compliant performance and payment bonds. We grant the government's motion.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

1. On March 27, 2025, the Navy awarded Contract No. N40085-25-C-2500 to Visionary for the "furnishing [of] all labor, transportation, supervision, material, equipment, and performing [of] all operations in connection with performing parking garage repairs at Building 7401" at Great Lakes Naval Base in Illinois (R4, tab 20 at 752-53).

2. The contract incorporated by reference Federal Acquisition Regulation (FAR) 52.228-15, PERFORMANCE AND PAYMENT BONDS – CONSTRUCTION (Deviation 2020-O0016) (JUN 2020) (R4, tab 20 at 762). This clause provides that "[t]he Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer [CO], within the time period

specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work." FAR 52.228-15(c) (Deviation 2020-O0016).

3. The solicitation stated that "[i]n accordance with FAR 52.228-15, Performance and Payment bonds equal to 100% of the awarded dollar value are required 10 days after date of award" (R4, tab 3 at 287).

4. The contract also incorporated by reference FAR 52.228-1, BID GUARANTEE (SEP 1996) (R4, tab 20 at 762). FAR 52.228-1 provides in relevant part:

> (d) *If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.*
>
> (e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(Emphasis added).

5. Upon notification of award on March 27, 2025, the Navy directed Visionary to submit the required performance and payment bonds within 15 calendar days of the award (R4, tab 20 at 750-51).

6. On April 11, 2025, 15 days later, Visionary submitted Standard Form (SF) 25 – Performance Bond and SF 25A – Payment Bond to the Navy, which indicated that First Standard Asurety, LLLP (FSA) would act as the surety for both the payment and performance bonds (R4, tab 21 at 838, 840-47).

7. The signature block for both bonds was executed by "David Harris, Managing Partner of FSA, LLLP" in the space identified as "Individual Surety(ies)" (R4, tab 21 at 841, 844). Each signature block also included a stamp labeled "First Standard Asurety LLLP" (*id.* at 841, 844).

8. By letter dated April 15, 2025, the Navy advised Visionary that its SF 25 and SF 25A submissions were "NON-COMPLIANT" because FSA was not listed in the Treasury Department Circular 570 as an approved corporate surety as required by

FAR 52.228-15(d) (R4, tab 22 at 852). The Navy further warned that "[t]he contract may be terminated for default in accordance with FAR clause 52.228-1, BID GUARANTEE" if compliant bonding was not submitted (*id.*).

9. That same day, Visionary replied via email requesting the Navy to "[p]lease see attached POA for an individual surety and advise if there are any additional documents needed" (R4, tab 23 at 853). Included as an attachment was a document entitled "Special Meeting of the Members of: First Standard Asurety, L.L.L.P.," which authorized:

> David Harris, as Manager Partner of *First Standard Asurety, LLLP*, alone, or with other officers, to execute any and all instruments, affidavits, certificates, agreements, guaranty agreements, surety bonds, bid bonds, and any and all other instruments, documents, and agreements on behalf of *First Standard Asurety, LLLP*, **with full Power of Attorney** as he shall deem necessary or desirable, to effect or facilitate the issue of bonds, not to exceed Twenty-five Million United States Dollars ($25,000,000).

(*Id.* at 854) (emphasis in original)

10. The Navy informed Visionary via email dated April 21, 2025, that it had determined that FSA did not meet FAR 2.101's definition of "individual surety" because FSA was a business entity and not an individual person (R4, tab 27 at 978-79). Specifically, the Navy stated "it appears that Mr. David Harris is executing the bonds in his capacity as managing partner of First Standard Asurety, LLLP, not in his personal capacity" (*id.* at 979).

11. Visionary replied that same day that it would submit new payment and performance bonds by the end of the week (R4, tab 27 at 978).

12. On May 9, 2025, 43 calendar days after contract award, the Navy issued a letter to Visionary expressing its concern with Visionary's "lack of progress" in securing acceptable performance and payment bonds (R4, tab 31 at 1000-02). The letter directed Visionary to "submit, in writing, when Visionary Services intends to submit compliant performance & payment bonds and certificate of insurance and the procedures or steps you intend to take to ensure the completion of this contract in a timely manner" no later than May 16, 2025 (*id.* at 1002).

13. Visionary responded on May 13, 2025, with an attachment containing "additional information reviewed by legal counsel" (R4, tab 32 at 1003). The attachment provided a legal analysis from counsel for FSA on its belief that FSA

qualified as an individual surety under FAR 2.101's definition (*id.* at 1005-06). The attachment asserted that:

> In sum, because an LLLP is not within the FAR definition of a corporate surety, a natural person (such as Mr. Harris) is behind the LLLP and remains fully and personally liable, and the pledged assets meet every substantive requirement of FAR 28.203-1, FSA should be admitted as an individual surety for Visionary Construction, Inc.

(*Id.* at 1006)

14. The Navy responded via letter dated May 20, 2025, reiterating its determination that FSA was "not an acceptable surety as it neither qualifies as a 'corporate surety' or an 'individual surety' under the Federal Acquisition Regulation" (R4, tab 33 at 1009). The Navy further advised that if Visionary wished to use Mr. Harris as an individual surety for the performance and payment bonds, he must act exclusively in his individual capacity (*id.*).

15. Visionary acknowledged the Navy's determination that FSA did not qualify as an acceptable surety via letter dated May 23, 2025, and presented a "Bond Compliance Plan" advising that Visionary was "working with an approved surety agent and anticipate[d] submission of [Small Business Administration]-backed bonds no later than June 13, 2025" (R4, tab 34 at 1018).

16. Via email dated June 13, 2025, Visionary provided a summary of a Microsoft Teams meeting concerning the outstanding bond requirements to the Navy. During the meeting, Visionary proposed a teaming agreement with Martin Construction (Martin) to address the bonding issues. (R4, tab 36 at 1020)

17. On July 9, 2025, Visionary's counsel provided the Navy with a copy of the proposed teaming agreement with Martin (R4, tab 36 at 1022-34). Paragraph 3.1.2 of the agreement stipulated that "Payments from the Customer shall be made directly to Martin" (*id.* at 1026).

18. The Navy advised Visionary's counsel via email dated July 10, 2025, that the proposed teaming agreement violated the Assignment of Claims Act (31 U.S.C. § 3727) and FAR 32.802 because it required the Navy to pay Martin directly instead of Visionary and Martin was not a bank, trust company, or other financing institution (R4, tab 37 at 1036).

19. Visionary informed the Navy via email dated August 1, 2025, that it was "in the final stages of securing the bond" through ACSTAR Insurance Company (ACSTAR) (R4, tab 38 at 1039).

20. By email dated August 15, 2025, ACSTAR inquired whether the Navy would consent to assignment of monies due under the contract as a precondition of executing the bond (R4, tab 39 at 1042-43).

21. On August 18, 2025, the Navy responded that it did not believe that ACSTAR met the statutory definition of "other financial institutions" based upon Government Accountability Office (GAO) guidance and its own interpretation of the Assignment of Claims Act and thus would not consent to an assignment of monies to ACSTAR (R4, tab 39 at 1041-42). ACSTAR replied that same day that it "will not be able to write this bond" (*id.* at 1041).

22. The Navy issued a cure notice to Visionary on August 20, 2025, 146 calendar days after contract award, directing Visionary to submit compliant performance and payment bonds no later than September 2, 2025. The notice also warned that the Navy could terminate the contract for default if this deadline was not met. (R4, tab 40 at 1053-55)

23. On September 3, 2025, Visionary replied: "Apologies for the delay in responding, due to the holiday, our new surety encountered some roadblocks. Per the attached, they respectfully asked for an additional day to finalize the paperwork" (R4, tab 42 at 1072). Visionary's reply included an email attachment from Ms. Amanda Quigley of CCI Surety dated September 3, 2025, informing Visionary that Ms. Quigley was "still working on the underwriting for [Visionary's performance and payment] bond. I do need some more time, if you are able to get an extension on your deadline, that would be great" (*id.*; R4, tab 43 at 1076).

24. Visionary informed the Navy via email dated September 8, 2025, that it was "not in a position to meet [the Navy's] final submission deadline for acceptable bonds" and requested that the Navy "exercise its discretion to terminate this contract **for the convenience of the Government**" (R4, tab 43 at 1077-78) (emphasis in original).

25. The Navy terminated the contract for default on September 24, 2025 (R4, tab 45 at 1082-83, tab 46 at 1084-85).

26. Following the default termination, the Navy awarded the contract to Diverse Solutions Group, Inc. (Diverse Solutions) (R4, tab 47 at 1086).

27. Visionary appealed the default termination to the Board. The Board docketed Visionary's appeal as ASBCA No. 64426 on December 30, 2025.

DECISION

The Parties' Contentions

The Navy moves for summary judgment on the grounds that Visionary's failure to obtain compliant performance and payment bonds required by the contract justified the termination for default as a matter of law (gov't mot. at 3-5; gov't reply at 1).

Visionary asserts that (1) the Navy's failure to comply with the FAR renders the default termination procedurally deficient (app. opp'n at 5); (2) the Navy's actions were responsible for the final bond failure with ACSTAR (*id.* at 5-6); (3) the CO's decision to terminate for default rather than convenience was arbitrary and capricious (*id.* at 6-7); and (4) conversion of the default termination into a termination for convenience would be appropriate based on the record (*id.* at 7). Visionary asserts that "multiple genuine disputes of material fact" impact the appeal, including: 1) whether the government provided Visionary an opportunity to cure the bond deficiency before deciding to terminate for default; 2) whether the government shifted its own position and rulings to cause the bond impasse; and 3) whether the CO appropriately applied FAR 49.402-3(f) (*id.* at 1). Visionary also requested that the Board deny the government's request for a stay of discovery (*id.* at 8)

In its reply, the government disputes Visionary's characterization of its genuine issues of material fact, mostly stating that Visionary's arguments are characterizations of its position, not factual issues (gov't reply).

Standard of Review

When deciding a motion for summary judgment, the Board looks to Rule 56 of the Federal Rules of Civil Procedure (FED. R. CIV. P.) for guidance. Board Rule 7(c)(2). Summary judgment is appropriate when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987). A fact is material if it may affect the outcome of the decision. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). The movant bears the burden of establishing the absence of any genuine issue of material fact. *Celotex*, 477 U.S. at 322. Such facts must be viewed in the light most favorable to the non-moving party. *Liberty Lobby*, 477 U.S. at 255; *C. Sanchez and Son, Inc. v. United States*, 6 F.3d 1539, 1541 (Fed. Cir. 1993). However, the non-movant must set forth specific facts demonstrating the existence of a genuine issue of material fact; mere conclusory statements and bare assertions are inadequate. *Mingus*, 812 F.2d at 1390-91;

see also Liberty Lobby, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in support of the [non-movant]'s position will be insufficient . . . ."). The Board's responsibility at this stage is not "'to weigh the evidence and determine the truth of the matter,' but rather to ascertain whether material facts are disputed and whether there exists any genuine issue for trial." *Holmes & Narver Constructors, Inc.*, ASBCA Nos. 52429, 52551, 02-1 BCA ¶ 31,849 at 157,393 (quoting *Liberty Lobby*, 477 U.S. at 249).

The Termination of the Contract for Default Was Justified as a Matter of Law

It is well settled that a contractor's failure to obtain bonding justifies a default termination as a matter of law. *Odyssey Int'l, Inc.*, ASBCA No. 62085 *et al.*, 20-1 BCA ¶ 37,623 at 182,654; *Marshall's Elec., Inc.*, ASBCA No. 59749, 16-1 BCA ¶ 36,300 at 177,017; *Ruffin's A-1 Contracting, Inc.*, ASBCA No. 38343, 90-3 BCA ¶ 23,243 at 116,626; FAR 52.228-1(d). Visionary and the Navy do not dispute that the contract required Visionary to secure payment and performance bonds within 10 days of award and the government allowed 15 days (findings 2-5). It is further undisputed that despite numerous extensions of time, Visionary failed to secure compliant bonds (findings 8, 10, 12-14, 18, 21-24). Thus, Visionary can only succeed in overturning the default termination by demonstrating that the CO's exercise of discretionary judgment "was so unreasonable, arbitrary, or capricious as to be invalid." *Ruffin's*, 90-3 BCA ¶ 23,243 at 116,626; *see also Pac. Sunset Builders, Inc.*, ASBCA No. 39312, 93-3 BCA ¶ 25,923 at 128,945.

Visionary asserts that there is a genuine issue of material fact as to whether the Navy provided it with the opportunity to cure correctable bond deficiencies before resorting to a default termination (app. opp'n at 5). We find that there is no such issue. While Visionary cites its "good faith efforts" to obtain compliant bonding as evidence that the default termination was improper (app. opp'n at 7-8), a review of the Navy's actions and rejections of Visionary's proposed bond submittals demonstrates a reasonable effort to allow Visionary additional opportunities and time to secure adequate bonding despite Visionary's repeated failures to do so.

The Navy denied Visionary's first attempt to submit the bonds through FSA because FSA was not listed as an approved corporate surety in the Treasury Department Circular 570 as required by FAR 52.228-15(d) and because FSA did not meet FAR 2.101's definition of an "individual surety" (findings 6-8, 10, 14). The Navy further advised that Mr. Harris could qualify as an individual surety if he acted exclusively in his individual capacity (finding 14), yet there is no evidence in the record that Visionary ever pursued this avenue. On May 9, 2025, 43 days after contract award, the Navy issued its letter of concern regarding Visionary's lack of progress but nevertheless continued to allow Visionary to submit proposals (finding 12). The Navy rejected Visionary's second attempt involving the proposed teaming agreement with

Martin because the agreement would have violated the Assignment of Claims Act by requiring the Navy to pay Martin directly instead of Visionary (findings 16 18).

Visionary contends that there is a genuine issue of material fact as to whether the Navy changing positions on the legality of securing the bonding through ACSTAR was a primary and controlling cause of its failure to obtain adequate bonding (app. opp'n at 2-3). We disagree. Nothing in the record supports Visionary's contention that the Navy changed positions. The Navy denied Visionary's ACSTAR proposal, which would have required the Navy to assign monies due under the contract to ACSTAR as a precondition, because it determined that ACSTAR was not a "financial institution" within the meaning of FAR 32.802 and thus ineligible for such an assignment under the Assignment of Claims Act (findings 19-21).

Visionary also contends that the CO failed to appropriately weigh "all required FAR 49.402-3(f) factors" prior to deciding to terminate for default (app. opp'n at 1). We disagree. Visionary's disagreement with the outcome does not mean the government failed to properly terminate the contract and does not create a genuine issue of material fact. The government provided Visionary with ample opportunities to cure the bonding problem. The Navy issued the cure notice to Visionary on August 20, 2025, 146 days after contract award despite the fact that the bonding was required to be secured within 10 days of award (findings 3, 22), and it was not until after Visionary informed the Navy that it was unable "to meet [the Navy's] final submission deadline for acceptable bonds" that the Navy finally terminated the contract for default on September 24, 2025 (181 days after award) (findings 24-25). Furthermore, while Visionary avers that there is a genuine dispute of material fact as to whether a termination for convenience to the government would have been more appropriate in this situation than a termination for default (app. opp'n at 6-7), the Navy was still in need of the services to be provided under the contract, as evidenced by the Navy awarding the contract to Diverse Solutions after the default termination (finding 26). Nothing in the record indicates any actions taken by the Navy or the CO to be "so unreasonable, arbitrary, or capricious as to be invalid," (*Ruffin's*, 90-3 BCA ¶ 23,243 at 116,626), nor does Visionary specifically allege any such action. In fact, the record shows that the Navy exhibited a remarkable amount of patience.

Once a default has been established, the onus is on the contractor to prove that its default is excused. *HK&S Constr. Holding Corp.*, ASBCA No. 60164, 19-1 BCA ¶ 37,268 at 181,532; *ADT Constr. Grp.*, ASBCA No. 55358, 13-1 BCA ¶ 35,307 at 173,315. When the contractor claims that the government was responsible for its failure to perform, the burden is on the contractor to demonstrate that the government's action was the primary or controlling cause of the default. *Odyssey Int'l*, ASBCA No. 62085 *et al.*, 21-1 BCA ¶ 37,861 at 183,849; *ADT*, 13-1 BCA ¶ 35,307 at 173,315. Visionary alleges that its default was caused by reasonable reliance on a position the Navy later reversed regarding the ACSTAR bond submission, asserting that "[t]he

Government cannot simultaneously tell a contractor that an assignment based [on] bonding structure is legally viable, then reverse that position five weeks later without that reversal being examined as a contributing cause of the contractor's inability to perform" (app. opp'n at 2-3). Specifically, Visionary asserts that the Navy advised that certain assignments would be permissible if they met the Assignment of Claims Act's requirements when the Navy rejected the Martin teaming agreement proposal, then diverted from this position by refusing to agree to assign monies due under the contract to ACSTAR as a precondition of executing the bond (*id.*). This was not a reversal. Rather, the Navy simply advised that it did not believe that it could legally assign the payments directly to ACSTAR based upon both GAO guidance and its own interpretation of the Assignment of Claims Act, and ACSTAR decided that it would not be able to write the bonds based upon this determination (finding 21). Because Visionary raises no dispute of material fact as to whether the Navy acted in accordance with the proper governing authorities in determining that ACSTAR did not qualify as a permissible surety, it has failed to establish that its default was not justified. *Celotex*, 477 U.S. at 322; *Mingus*, 812 F.2d at 1390.

Visionary further asserts that the Navy's failure to comply with FAR 28.203(c) renders the default termination procedurally deficient (app. opp'n at 5). Visionary claims that FAR 28.203(c) requires a CO reviewing individual surety submissions to notify the contractor of deficiencies and provide an opportunity to correct them (*id.*). The Board is unable to identify any section of the FAR as 28.203(c).[1] Appellant appears to be referencing FAR 28.203-1(c), which provides:

> Using the information from the SF 28 submitted by the offeror or contractor, the contracting officer shall notify the Treasury's collateral operations support team by email at BMT@fiscal.treasury.gov or by phone at 888–568–7343, of the individual surety, the assets to be pledged, and the amount necessary to cover the individual surety bond, i.e., the required amount to be collateralized. Treasury will advise the contracting officer whether the assets are eligible to be pledged, consistent with 28.203–1(a), and of the valuation of the assets offered to be pledged, consistent with the valuation standards in 28.203–1(b)(2). If after 3 business days the contracting officer has not received a response from Treasury, the contracting officer may seek assistance from the Director, Bank Policy and Oversight, at 202-504-3502. *The contracting officer shall determine whether the individual surety bond is acceptable as to the amount*

[1] FAR 28.203 is entitled "Individual Sureties" and is divided into sections 28.203-1, 28.203-2, 28.203-3, 28.203-4, and 28.203-5.

> *necessary to cover the individual surety bond based on the asset eligibility and valuation assessment from Treasury. The contracting officer shall notify both the offeror or contractor and the individual surety of this determination.*

(Emphasis added). Notably absent from this section, or any other section of FAR 28.203 for that matter, is a requirement that the CO notify the contractor of deficiencies or provide a chance to resolve them. Moreover, even if such a requirement existed, the Navy issued a cure notice that afforded Visionary the opportunity to submit acceptable performance and payment bonds no later than September 2, 2025, and advised that the contract could be terminated for default if this deadline was not met (finding 22).

Finally, Visionary asserts that the Board should deny the government's request to stay discovery because the Rule 4 file "may not contain all documents relevant to the Government's legal determinations . . . ." (app. opp'n at 8). The Board stayed discovery by order dated April 2, 2026. However, because appellant is proceeding *pro se*, we interpret appellant's request as a motion pursuant to Federal Rule 56(d) alleging that it is unable to oppose the government's motion because facts are unavailable to the nonmovant. Pursuant to Rule 56(d), the nonmoving party must support its request with an affidavit or declaration specifying the reasons why it was unable to present the facts essential to defend against the government's motion. *Odyssey Int'l, Inc.*, ASBCA Nos. 62062, 62279, 21-1 BCA ¶ 37,902 at 184,074. Even ignoring that Visionary has not complied with the requirement that it submit an affidavit or declaration, it has not explained how discovery would allow it to rebut the summary judgment motion. At most, Visionary asserts that the Rule 4 file "*may not* contain all documents relevant to the Government's legal determinations" (app. opp'n at 8) (emphasis added). Alleging that something might turn-up in discovery is insufficient to prevent entry of summary judgment. *Odyssey*, 21-1 BCA ¶ 37,069 at 184,074.

CONCLUSION

For the foregoing reasons, the Navy is entitled to judgment as a matter of law and its motion for summary judgment is granted. Visionary's appeal is denied.

Dated: August 20, 2026

HEIDI L. OSTERHOUT
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

J. REID PROUTY
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur

DAVID D'ALESSANDRIS
Administrative Judge
Acting Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 64426, Appeal of Visionary Construction, Inc. dba Visionary Services, rendered in conformance with the Board's Charter.

Dated: August 20, 2026

PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals