

# ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of - )  
Globe Trailer Manufacturing, Inc. ) ASBCA No. 60979  
Under Contract No. W56HZV-11-D-0204 )

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OPINION BY ADMINISTRATIVE JUDGE D'ALESSANDRIS  
PURSUANT TO BOARD RULE 11

In 2011 the United States Army (Army) awarded a five-year requirements contract for low-bed semitrailers to appellant, Globe Trailer Manufacturing, Inc. (Globe). The Army terminated the contract for convenience of the government in March 2014. This appeal has a long procedural history, with three prior Board decisions, and multiple stays for settlement negotiations. In short, Globe filed its first termination settlement proposal (TSP I) in October 2014. In a December 2014 final decision, the contracting officer (CO) found partial merit, awarding Globe \$987,000 against Globe's claimed \$7.2 million. Globe appealed to the Board. In June 2017 Globe submitted a revised TSP (TSP II) claiming \$21 million in termination costs and alleged constructive changes to the contract. The Board issued a decision on cross-motions for summary judgment regarding the proper calculation of a termination settlement for a contract requiring first item testing, and noted that Globe's constructive change allegations were not properly before the Board. *Globe Trailer Mfg., Inc. (Globe Trailer I)*, ASBCA No. 60979, 19-1 BCA ¶ 37,392. In June 2020, Globe submitted a revised TSP calculation (TSP II Supplement) and requested a CO's final decision. After the government informed Globe that it would not issue a final decision, Globe appealed on the basis of a deemed denial, and the appeal was docketed as ASBCA No. 62594. We denied the government's motion to dismiss, holding that the TSP II Supplement was a valid claim before the Board as a deemed denial.

*Globe Trailer Mfg., Inc. (Globe Trailer II)*, ASBCA No. 62594, 21-1 BCA ¶ 37,795 at 183,496. We subsequently granted summary judgment in favor of the government on a statute of limitations basis because the TSP II Supplement was submitted more than six years after claim accrual. *Globe Trailer Mfg., Inc. (Globe Trailer III)*, ASBCA No. 62594, 21-1 BCA ¶ 37,973 at 184,419-20.

Following the Board's decisions in the related ASBCA No. 62594 appeal, the parties were able to negotiate a partial settlement resolving issues relating to the work performed by Globe prior to the termination. However, the parties were unable to resolve Globe's claim for settlement expenses following termination. The parties have requested to proceed pursuant to Board Rule 11, submission without a hearing. Globe seeks \$1,372,291.35 in settlement expenses comprised of legal and consulting fees, internal payroll costs, payroll taxes, accounting consultant costs, and storage and inventory costs. The government opposes. We find that Globe is entitled to \$124,311.67.

### FINDINGS OF FACT

The parties submitted a "Joint Stipulation of Undisputed Facts" (JSF) dated January 10, 2025, that provides much of the following factual statement.

#### **I. The Contract, Termination For Convenience, and TSP I**

On September 21, 2011, the government, acting through the Army awarded Contract No. W56HZV-11-D-0204 and delivery order 0001 to Globe Trailer Manufacturing, Inc. The contract was a five-year requirements contract for M870A4 low bed semitrailers and related deliverables. (R4, tab 1 at G1-10) The contract contained two termination for convenience (T4C) clauses: Federal Acquisition Regulation (FAR) 52.212-4(l) for commercial items; and the standard clause, FAR 52.249-2 (R4, tab 1 at G64-65).

On March 11, 2014, the Army terminated the contract for convenience of the government stating that the termination was issued pursuant to the FAR 52.212-4(l) T4C clause for commercial item contracts. (R4, tab 23 at G241). On October 24, 2014, Globe requested that it be approved to submit its termination settlement proposal using the Standard Form 1426 (total cost basis settlement proposal). (App. supp. R4, Tab 535 at 2). On October 28, 2014, the Defense Contract Management Agency (DCMA or government) Terminating Contracting Officer (TCO) Levi Butler disagreed with Globe's requested approach and instructed Globe to submit its termination proposal using the inventory basis approach (*id.* at 1). On November 12, 2014, Globe informed TCO Butler that it had completed its interim settlement proposal (app. supp. R4, tab 537 at 2). That same day, Globe submitted its interim

termination settlement proposal (TSP I) using the Standard Form 1435 (inventory basis settlement proposal) in the amount of \$7,233,387.89 (R4, tab 25 at G248, 251).

On November 13, 2014, TCO Butler asked Globe if it had input the material/parts information for its inventory into the Defense Contract Management Agency (DCMA) Plant Clearance Automated Reutilization Screening System (PCARSS) (app. supp. R4, tab 537 at 1). Globe informed TCO Butler that it was in the process of formatting its data for the PCARSS system (*id.*). On or about April 9, 2015, TCO Butler requested that the Defense Contract Audit Agency (DCAA) perform an audit of the proposed amounts in Globe's TSP I (R4, tab 28 at G289). On August 24, 2015, as part of the DCAA audit, Globe prepared and presented a TSP to the government for consideration of its outstanding costs resulting from the termination for convenience (app. supp. R4, tab 543).

Between May and October 13, 2015, Globe submitted several inventory audit reports on parts and equipment to DCMA for review (app. supp. R4, tabs 541, 544). On or about December 17, 2015, DCAA issued its "Independent Audit Report on Proposed Amounts in Globe Trailer Manufacturing, Inc.'s Settlement Proposal dated November 12, 2014" (R4, tab 28).

#### **A. Trenham Law and Capital Edge Consulting Fees**

During this period, Globe was represented by Trenam Law and retained Capital Edge Consulting for assistance with its termination settlement proposal. Globe is seeking recovery of \$346.50 in fees paid to Trenam Law for legal services in preparing its TSP I (app. supp. R4, tab 819 at 2). Globe also seeks recovery of \$1,260 paid to Capital Edge Consulting for federal contractor support and accounting services in preparation of TSP I (*id.*). DCAA did not question the Trenam and Capital Edge costs in the December 2015 audit report (R4, tab 28 at G297).

#### **B. Watson & Associates Legal Fees**

On or about February 22, 2016, Globe retained the law firm of Watson & Associates "to assist with reviewing circumstances surrounding the government' [sic] termination for convenience and provide suggestions to Client's response to the agency" (app. supp. R4, tab 814 at GLOBE.SUPP47) (emphasis deleted). Watson also agreed to review the underlying contract and the DCAA audit report and to assist Globe with its response to the audit. Watson was compensated with a flat-rate fee of \$8,700. (*Id.*) Globe's retainer agreement with Watson provides that the scope of work "does not include litigation. Any clause within this agreement that contemplates litigation service for Client shall be void." (*Id.*) (emphasis deleted) Watson's analysis was used to prepare Globe's response to the DCAA audit report (app. supp. R4, tab 545). Globe paid the \$8,700 to Watson (R4, tab 36 at G409-10).

## **II. The Final Decision, Appeal to the Board, and TSP II**

On October 7, 2016, TCO Butler issued a final decision awarding Globe \$987,345.76 (R4, tab 31). TCO Butler determined that Globe was entitled to the price of work completed on the first article contract line items in the amount of \$977,345.76 under the first prong of the FAR 52.212-4(l) commercial items termination for convenience clause (*id.* at G339). TCO Butler also determined Globe was entitled to \$10,000 under the second prong of the commercial items termination for convenience clause as costs resulting from the termination (*id.* at G340).

On or about December 8, 2016, Globe retained the law firm of Seidman & Associates (app. supp. R4, tab 815 at GLOBE.SUPP135). On December 29, 2016, Globe appealed the final decision to the Board, which docketed the appeal as ASBCA No. 60979. On or about February 17, 2017, Paul Seidman, counsel for Globe, retained The Kenrich Group, LLC (Kenrich) to provide professional expert accounting and contract administration services to Seidman on behalf of Globe (R4, tab 41 at G881-83).

On February 24, 2017, the parties jointly requested that the Board suspend the proceedings to allow Globe “to prepare a commercial items settlement proposal and revise its traditional settlement proposal” (R4, tab 33). The parties also sought to resolve issues concerning which FAR provision was applicable to the termination during the stay period (*id.*).

On or about May 22, 2017, counsel for Globe, Mr. Paul J. Seidman, sought permission from DCMA counsel to submit a new termination settlement proposal using the total cost basis instead of the inventory basis (app. supp. R4, tab 550). On or about May 24, 2017, DCMA counsel denied Globe’s request, and advised that the TCO “does not intend to reopen pre-decisional negotiations related to this termination” (app. supp. R4, tab 551 at 1). DCMA counsel informed Seidman that “[t]he voluntary and informal exchange of relevant information by the parties to an appeal is encouraged under Board Rule 8, and the Government is willing to consider information in any format that Globe wishes to submit for the purpose of attempting to resolve the dispute” (*id.* at 2). On or about June 30, 2017, Seidman sent an electronic copy of a revised termination settlement proposal to DCMA counsel assigned to the subject appeal (TSP II) (app. supp. R4, tab 552 at 1, 87).

TSP II asserted that Globe was entitled to \$21,003,162.54 (*id.* at 3). The amount claimed included settlement expenses through May 31, 2017 (*id.* at 3 n.1). Globe’s TSP II sought reimbursement as settlement expenses the following costs: professional services costs in the amount of \$446,902.60, trailer and inventory storage costs in the amount of \$79,400, Globe labor costs in the amount of \$246,446.64, general and administrative costs in the amount of \$185,330.80, and payroll tax costs in the amount of \$15,110.10 (*id.* at 86). In addition to the claimed settlement expenses,

Globe's TSP II "claimed entitlement for compensation for purported constructive changes to the contract . . ." *Globe Trailer I*, 19-1 BCA ¶ 37,392 at 181,783.

On or about July 17, 2017, Globe filed its complaint in this appeal. On July 27, 2017, Seidman sent a letter to DCMA counsel proposing a meeting with DCMA to allow Globe to explain its TSP II (app. supp. R4, tab 553 at 2). On August 4, 2017, DCMA counsel responded to Seidman informing him that DCMA counsel discussed the July 27, 2017, letter with TCO Butler and that DCMA counsel and TCO Butler agreed that a settlement meeting "would not be productive at this time" (app. supp. R4, tab 554). DCMA counsel informed Seidman he was in the process of reviewing materials previously provided, and that DCMA "may well seek an explanation of specific aspects of those materials as that review progresses" (*id.*).

On September 6, 2017, Seidman, on behalf of Globe, submitted a partial payment request and partial settlement offer to resolve ASBCA No. 60979 (app. supp. R4, tab 558). On September 22, 2017, DCMA rejected Globe's settlement offer (app. supp. R4, tab 559). On or about November 17, 2017, the government filed its answer to the complaint and filed a motion to strike part of Globe's complaint.

#### **A. Seidman & Associates Legal Fees**

Globe seeks recovery of \$383,281.43 paid to Seidman & Associates. Seidman represented Globe both in litigating the termination for convenience and in settlement negotiations. Seidman recognized that the litigation expenses would not be reimbursable and set-up separate cost codes for litigation costs and non-litigation costs. Seidman represented Globe between December 2016 and May 2018 (app. supp. R4, tab 815 ¶¶ 3-6). The non-litigation fees represent time expended "on behalf of Globe Trailer in preparing and negotiating a revised termination settlement proposal and attempting to reach a negotiated resolution in ASBCA No. 60979" (*id.* ¶ 7). Globe has paid the invoices [redacted in original] (*id.* ¶ 9). Mr. Seidman's declaration is partially redacted in paragraph 8 and paragraphs 10- 11 are completely redacted (*id.* ¶¶ 8, 10-11).

For matters that benefitted both the litigation and termination settlement, such as reviewing the case file, Seidman divided the time equally between the two cost codes (app. supp. R4, tab 815 at GLOBE.SUPP133-36). In addition, Seidman's invoice 7407 includes an entry for January 26, 2017 of "Review file; review draft complaint" (app. supp. R4, tab 815 at GLOBE.SUPP127). Similarly, invoice 7432 includes an entry for March 7, 2017 of "Review ASBCA order granting Motion to Suspend Proceedings; litigation planning" (*id.* at GLOBE.SUPP114). Globe concedes that the January 26, 2017 entry was in error and seeks to reduce its claim by the \$232.50 amount of that entry (app. reply br. at 9 n.5). Other invoices show entries that appear to split time between litigation and non-litigation invoices, with similar time,

but slightly different descriptions. For example, on January 23, 2017, on invoice 7407 Mr. Seidman (billing code PJS) billed 2.00 hours for “Review documents” (*id.* at GLOBE.SUPP126). That same day, on invoice 7408 (litigation costs) he billed the same 2.00 hours, but with the description “Review documents; draft complaint” (*id.* at GLOBE.SUPP129).

Globe charged virtually all expenses between the February 2017 request to stay to allow Globe to prepare a revised TSP until the completion of TSP II at the end of June 2017 to the Termination for Convenience (non-litigation) billing code (*id.* at GLOBE.SUPP100-21). The sole exception appears to be a 0.50 hour charge to review a Board order on March 7, 2017 (*id.* at GLOBE.SUPP114). These invoices represent the majority of Globe’s claim for work performed by Seidman. Globe seeks \$62,065.58 for invoice 7432 (March 2017); \$34,227.04 for invoice 7434 (April 2017); \$81,497.01 for invoice 7444 (May 2017); and \$74,248.42 for invoice 7446 (June 2017) (*id.* at GLOBE.SUPP103, 108, 111, 116), for a total of \$252,038.05 of the total claimed amount of \$383,048.93.<sup>1</sup>

### **III. Cross-Motions for Summary Judgment and *Globe Trailer I***

On or about April 30, 2018, Jackson Kelly PLLC replaced Seidman as Globe’s counsel in ASBCA No. 60979 (app. supp. R4, tab 817 at GLOBE.SUPP239). On October 18, 2018, the parties filed cross-motions for partial summary judgment in ASBCA No. 60979. On July 10, 2019, the Board issued a final decision on the parties’ cross motions regarding the proper calculation of a termination settlement for a contract requiring first item testing, and determined that the termination settlement should include compensation for work performed on contract data requirements lists required by contract line item 0006AA to be completed before first article approval. *Globe Trailer I*, 19-1 BCA ¶ 37,392 at 181,786. The Board also determined that the first article test requirements included in the contract precluded Globe from recovering compensation in excess of the contract line item (CLIN) 0001AA amount. *Id.*

#### **A. Jackson Kelly Legal Fees**

Globe seeks recovery of \$25,934.14 in fees paid to Jackson Kelly and \$218,606.25 in fees paid to the Kenrich Group. Jackson Kelly represented Globe between April 2018 and August 2019. Jackson Kelly assisted Globe in attempting to settle its dispute and Globe has paid the invoices. (App. supp. R4, tab 817 ¶¶ 6-11) Globe has redacted certain of the time entries on Globe’s invoice, and removed the costs associated with those entries from the amount claimed (*id.* at GLOBE.SUPP233-39;

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<sup>1</sup> This is the total amount after removing the \$232.50 that Globe contends was included in error.

app. reply br. at 10-11 (explaining the calculation of claimed amounts)). In addition, Globe has redacted paragraph 10 of the declaration of Lindsay Simmons (an attorney at Jackson Kelly) (app. supp. R4, tab 817 ¶ 10). Certain of the time entries contain descriptions that could be interpreted as litigation tasks. For example, the entries on May 6 and May 7, 2018 for Mr. Whytsell have descriptions of “[r]eviewing materials from client; analyzing legal issues concerning same; reviewing case law” and “[a]nalyzing legal issues concerning case and potential strategy . . .” respectively (*id.* at GLOBE.SUPP238).

### **B. Kenrich Group Consulting Fees**

During the 2017-18 period, the Kenrich group provided support to the Seidman and Jackson Kelly legal firms on behalf of Globe (app. supp. R4, tab 818 ¶ 5). Mr. Greg Bingham, a forensic accounting and quantum expert, avers that he provided “professional expert accounting and contract administration services” and “extracted Globe Trailer’s time and billing records . . . including but not limited to, settlement expenses incurred on its termination proposals” (*id.* at ¶¶ 2, 6,7). Certain statements made by Mr. Bingham prior to being retained and early in the assignment, indicate confusion regarding the scope of the engagement. For example, in an internal communication on February 15, 2017, before Kenrich was formally retained, Mr. Bingham noted that the work “will likely be in support of a CDA claim” (R4, tab 41 at G963). Mr. Bingham’s transmission of a draft retainer letter to Globe noted that his firm should be retained by Seidman so that Kenrich’s “work product is covered by legal privileges so that our work does not necessarily have to be disclosed. In a dispute process there will be ‘discovery’ and our work product will be requested” (*id.* at G966).

Mr. Bingham testified in his deposition that “virtually all or all” of the work performed by Kenrich was in support of the settlement or settlement negotiations (R4, tab 41 at G891). However, Mr. Bingham also testified that Kenrich assisted Globe with a potential request for equitable adjustment (REA) (*id.* at G863-64). This is supported by Kenrich’s invoice for June 2017 that includes a June 2, 2017 time entry for “[r]eview and edit draft narrative; clarifications with client about REA amounts; discussion with counsel; internal status” (app. supp. R4, tab 818 at GLOBE.SUPP272).

### **IV. Further Settlement Negotiations, TSP II Supplement, Request for Final Decision**

On or about September 2019, Stinson LLP replaced Jackson Kelly PLLC as counsel for Globe (app. supp. R4, tab 816 ¶ 6). On or about February 4, 2020, Globe submitted to the DCMA trial attorneys a letter with the subject “Position Statement for Settlement Discussion concerning Constructive Changes Contract No. W56HZV-11-D-0204.” *Globe Trailer III*, 21-1 BCA ¶ 37,973 at 184,418. By email on June 11,

2020, Globe provided supplemental materials related to the asserted constructive changes and requested a CO's final decision (TSP II Supplement) (*id.*). On or about November 18, 2020, the parties entered into a Partial Settlement Agreement of ASBCA No. 60979 (R4, tab 34). Therein, the parties agreed to resolve prong one under the termination for convenience clause in accordance with FAR 52.212-4(l) for work performed by Globe prior to the termination under CLIN 0006AA. The settlement was to be in "full satisfaction of any and all claims including costs, attorney's fees, and interest arising under CLIN 0006AA . . ." (R4, tab 34 at G346).

After the government informed Globe that the government did not believe Globe's TSP II submission was a valid claim, and that DCMA would not issue a final decision with respect to TSP II, Globe appealed to the Board on the basis of a deemed denial of TSP II. *Globe Trailer III*, 21-1 BCA ¶ 37,973 at 184,418-19. The Board docketed Globe's TSP II appeal as ASBCA No. 62594. *Id.* The government moved for summary judgment on ASBCA No. 62594, asserting that the TSP II was submitted more than six years after claim accrual. *Id.* at 184,416. We granted the government's motion, entered summary judgment in favor of the government, and denied Globe's ASBCA No. 62594 appeal related to the alleged constructive changes outlined in the TSP II Supplement. *Id.* at 184,421.

#### **A. Stinson Legal Fees**

Globe seeks reimbursement of \$31,168.50 in legal fees paid to Stinson during the period September 2019 through December 2022, while Stinson assisted Globe in litigating two appeals before the Board and attempting to settle one of the disputes (app. supp. R4, tab 816 ¶¶ 6-7). The declaration of Globe's former counsel at Stinson, Mr. Whytsell, asserts that the attached invoices reflect "the time expended on behalf of Globe Trailer [redacted in original] in ASBCA No. 60979" (*id.* ¶ 7). The declaration additionally asserts that the invoices "are a true and accurate copy of the Firm's invoices to Globe Trailer [redacted in original]" (*id.* ¶ 8). The declaration provides that "Globe Trailer has paid the invoices [redacted in original]" (*id.* ¶ 9). This statement is followed by three paragraphs that are completely redacted (*id.* ¶¶ 10-12).

The supporting invoices contain numerous entries that represent litigation activities not related to the termination settlement. For example, on December 17, 2019, Mr. Whytsell charged .40 hours to "Analyze legal issues concerning constructive change claim" (*id.* at GLOBE.SUPP222). On December 30 and 31, 2019, Mr. Stieger charged 2.40 hours to "[d]raft claim for constructive changes" and another 4.00 hours to "[c]ontinue drafting claim for constructive changes" (*id.*). On March 2, 2020, Mr. Whytsell charged 0.10 hours to review an email "concerning identifying government personnel with authority to settle constructive change claim" (*id.* at GLOBE.SUPP213). Further on June 3, 2020, Mr. Stieger charged 1.00 hours to "[r]eview and analyze ASBCA Partial Summary Judgment Decision and formulate

strategy for upcoming meeting with Government lawyers; formulate research and offensive discovery strategy for settlement costs/constructive change elements of case” (*id.* at GLOBE.SUPP193). On July 17, 2020, Mr. Whytsell charged 0.20 hours to exchange emails “concerning draft Complaint and response to Government inquiry about CLIN0006AA” (*id.* at GLOBE.SUPP185).

In addition to entries regarding the constructive change claim, the invoices contain multiple entries regarding litigation work in reviewing the settlement agreement. For example, on May 26, and 27, 2020, Mr. Whytsell charged 1.00 and 2.50 hours respectively to exchange emails with the Board and others “concerning scheduling Status Conference” and to prepare for and represent Globe at the status conference with the Board (*id.* at GLOBE.SUPP202-03). Starting in October 2020 there are multiple time entries regarding drafting of the settlement agreement. For example on October 7, 2020, Mr. Stieger charged 0.50 hours to “[r]eview draft settlement agreement; draft email to client forwarding the same and pointing out release issues” (*id.* at GLOBE.SUPP163). On October 12, 2020, Mr. Whytsell charged 0.40 hours to “[r]eview Partial Settlement Agreement; analyze legal issues concerning same” (*id.*). On October 23, 2020, Mr. Stieger charged a redacted number of hours, that was reduced by an unknown person to 0.50 hours with a partially redacted description of “[r]eview email correspondence from client and modify draft settlement agreement [redacted in original]” (*id.* at GLOBE.SUPP165). On October 26, 2020, Mr. Stieger charged 0.60 hours to review “changes to Settlement Agreement . . . draft email to Mr. Patterson regarding updated changes to settlement agreement” (*id.*). On October 28, 2020, Mr. Stieger charged 0.20 hours to “[m]odify CLIN006AA settlement agreement” (*id.*).

## **V. Other Settlement Expenses**

Since submitting its TSP II in 2017, Globe is now seeking the following reimbursement for settlement expenses incurred from the date of termination to present under FAR 52.212-4(l): (1) internal administrative/payroll costs totaling \$256,524.84; (2) payroll taxes totaling \$19,624.15; (3) accounting consultant costs totaling \$60,480.; (4) general and administrative costs totaling \$286,965.54; (5) storage and inventory costs totaling \$83,290.07; (6) TSP 1 legal costs totaling \$1,606.50 in addition to the (7) Watson legal costs totaling \$8,700; (8) Seidman legal costs totaling \$383,048.93; (9) Stinson LLP legal costs totaling \$31,168.50; (10) Jackson Kelly PLLC legal costs totaling \$25,934.14; and (11) Kenrich Group expert consulting costs totaling \$218,606.25. Globe Trailer is not claiming attorney’s fees incurred after June 1, 2022, as settlement expenses under FAR 52.212-4(l).

#### **A. Globe Internal Labor Costs and Payroll Taxes**

Globe seeks \$78,592.45 in termination costs for its employees' work in 2014 preparing the TSP I and responding to data requests from the government (app. supp. R4, tab 788). For 2015, Globe seeks \$74,957.45 largely attributed to responding to DCAA and DCMA requests (app. supp. R4, tab 789). Globe seeks \$40,994.09 in termination costs for 2016, attributed to settlement negotiations (app. supp. R4, tab 790). Finally, for 2017, Globe seeks \$61,980.85 in termination costs primarily for preparation of TSP II (app. supp. R4, tab 791).

The supporting documentation for these costs is limited to a spreadsheet for each year. Globe's counsel represents that Globe separated and itemized "its payroll and employee costs associated with the termination" (app. br. at 19); however, the spreadsheets are cryptic at best. There are multiple entries with the limited description of "Workforce Business Services" (app. supp. R4, tabs 788-89). Appellant's counsel points to Brian Kalamanka's deposition that "Workforce Business Services processed employee payroll, and entries with that description were for employees allocated to the T4C work" (app. br. at 20 (citing R4, tab 36 at G463)). However, Mr. Kalamanka further testified that the methodology for allocating personnel to the termination for convenience work is not reflected in the exhibits and that he did not know if the underlying spreadsheets had been produced to the government (R4, tab 36 at G463-65). At best, we have Mr. Kalamanka' deposition testimony that he had the staff track their time in spreadsheets (*id.* at G464). The underlying documents do not appear to be in the record in this appeal, and have not been cited by appellant.

Additionally, \$116,000 of Globe's roughly \$250,000 internal payroll claim represents reimbursement for the work of one of its officers, Mr. Jeffrey Walters, Jr. Globe claims a total of \$116,000, comprised of \$25,000 for Mr. Walters in 2014 (app. supp. R4, tab 788); \$24,000 in 2015 (app. supp. R4, tab 789); \$27,000 in 2016 (app. supp. R4, tab 790); and \$40,000 in 2017 (app. supp. R4, tab 791). These claimed amounts are based solely on Mr. Walters' own estimates of his time during that period, and are not supported by any documentation (R4, tab 36 at G466). Mr. Walters testified that he was not the primary contact with DCMA during the TSP communications (R4, tab 37 at G655), did not prepare any part of Globe's TSP I (*id.* at G656), and did not track his time during that period (*id.* at G657). Mr. Walters further could not recall if he was paid a salary, or if he received dividends or a profit distribution from Globe Trailer in 2014 (*id.* at G692).

Globe seeks reimbursement of \$19,624.15 in payroll taxes consisting of the employer share of Social Security taxes (6.2%) and Medicare (1.45%) or 7.65% total (app. supp. R4, tab 792).

## **B. MDTV Project Solutions Fees**

Prior to working for Globe, Mr. Kalamanka worked for MDTV Project Solutions LLC (MDTV) as a consultant to Globe. Globe seeks reimbursement of \$60,480 in consulting costs paid to MDTV. Mr. Kalamanka testified at his deposition that 100% of his time billed to Globe while he worked for MDTV was for the TSP I (R4, tab 36 at G389, G534). Globe has submitted a summary of the hours claimed (app. supp. tab 793) and provided supporting documentation and descriptions of the work (app. supp. R4, tabs 794-813). The DCAA audit report of TSP I reviewed the claimed MDTV costs and did not question the costs; however, the audit report found that part of the cost was “to upgrade to a new accounting system that tracked inventory” and that the upgrade met the definition of settlement costs (R4 tab, 28 at G297-98).

## **C. General & Administrative Costs**

Globe seeks reimbursement of general and administrative costs (G&A) of \$286,965.53. Globe calculated its G&A rates as 90.76% in 2014 (app. supp. R4, tab 821 at GLOBE.SUPP286); 73.22% for 2015 (app. supp. R4, tab 823 at GLOBE.SUPP292); 124.3% for 2016 (app. supp. R4, tab 825 at GLOBE.SUPP298); and 106.9% for 2017 (app. supp. R4, tab 827 at GLOBE.SUPP304). Globe applied these G&A rates to the internal payroll costs discussed above, as well as the MDTV costs. Globe calculated its G&A rate using a single element cost input base of direct labor (app. supp. R4, tabs 820, 822, 824, 826). Such a calculation does not consider Globe’s cost of goods sold (COGS). For example, in 2014, Globe’s COGS was \$9,259,209.84 (app. supp. R4, tab 821 at GLOBE.SUPP285).

## **D. Storage and Inventory Costs**

Finally, Globe seeks reimbursement of \$83,290.07 in storage and inventory costs. Globe asserts entitlement to \$42,000 to store a government-provided trailer from the date of termination in March 2014 to when the government reclaimed the vehicle, a year later. This was based on a lease with Globe Real Property Rental for \$3,500 per month for twelve months for a property at 6002 31st St. East, Bradenton, Florida. (App. supp. R4, tabs 699; 701) The lease agreement in the record is unsigned and is dated May 15, 2010, over a year prior to contract award (app. supp. R4, tab 699 at 1, 11). However, Globe Real Property Rental does not own the property according to Florida real estate records. Instead, the property was owned by American Torch Tip Ltd. (*see* <http://www.manateepao.gov/parcel/?parid=1775821653>).

Globe contends that American Torch Tip Ltd. leased the property to Gator Air Conditioning, a sister company of Globe that then sub-leased the property to Globe through Globe Real Property Rental (app. reply br. at 20). Globe cites to record tabs

695 and 696 as evidence of this rental arrangement; however, tab 695 is a lease between American Torch Tip and Gator Air Conditioning for an entirely different property located at 6216 28th St. East, Bradenton, Florida (app. supp. R4, tab 695 at 1). The fact that this is a different property is confirmed by tab 696, an email from Mr. Kalamanka to an employee at the Kenrich Group that refers to the lease as “a third party lease with a sister company of Globe that is for a similar building and land less than 1 mile from here” (app. supp. R4, tab 696 at 1). Confusingly, Mr. Kalamanka testified at his deposition that the rental price was based on the “market rate” rather than an actual lease cost (R4, tab 36 at G503).

Globe additionally seeks \$29,920 to store trailers it produced pursuant to the contract, and \$7,480 to store inventory from the March 2014 termination until Globe received contracting officer direction in April 2017. This was calculated as 37.4 months at \$100 per trailer per month for the eight trailers, plus \$200 per month for the inventory, for a total of \$37,480 (app. supp. R4, tab 701). Globe also seeks reimbursement for the purchase of a storage trailer at \$3,850 to house materials and supplies, segregated from normal inventory (app. supp. R4, tab 828 at 1) and a \$40.07 charge at Harbor Freight (app. supp. R4, tab 789).

## DECISION

By request of the parties, this appeal is being decided pursuant to Board Rule 11, “Submission Without a Hearing.” Unlike a motion for summary judgment, which must be adjudicated on the basis of a set of undisputed facts, pursuant to Board Rule 11, the Board “may make findings of fact on disputed facts.” *DG21, LLC*, ASBCA No. 57980, 15-1 BCA ¶ 36,016 at 175,909 n.1, *aff’d*, *DG21, LLC v. Mabus*, 819 F.3d 1358 (Fed. Cir. 2016).

### **I. Allowable Termination Settlement Costs**

The FAR provides that:

- (a) A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

.....

(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of recordkeeping, reporting, and accounting related to the settlement of terminated contracts should be kept to a minimum compatible with the reasonable protection of the public interest.

FAR 49.201.

Globe must prove “by a preponderance of the evidence that it is entitled to a greater termination settlement amount than that determined by the TCO.” *Green Bay Logistic Servs. Co.*, ASBCA No. 61063, 18-1 BCA ¶ 37,031 at 180,307 (quoting *SWR, Inc.*, ASBCA No. 56708, 15-1 BCA ¶ 35,832 at 175,225); *Unified Eng’g, Inc.*, ASBCA No. 21565, 81-1 BCA ¶ 14,940 at 73,936). Moreover, Globe must prove its “loss with sufficient certainty so that the determination of the amount of damages [is] more than mere speculation.” *Fluor Intercontinental, Inc.*, ASBCA Nos. 62550, 62672, 22-1 BCA ¶ 38,105 at 185,100 (quoting *Lisbon Contractors, Inc. v. United States*, 828 F.2d 759, 767 (Fed. Cir. 1987)).

A contractor seeking to recover attorney fees arising from a T4C treads a narrow path. *ACLR, LLC v. United States*, 157 Fed. Cl. 324, 340 (2021), *aff’d*, No. 2023-1190, 2024 WL 4315111 (Fed. Cir. Sep. 27, 2024) (citing *Dairy Sales Corp. v. United States*, 593 F.2d 1002, 1006 (Ct. Cl. 1979)). Where legal costs potentially include legal fees associated with litigating against the government or pressing a claim, the failure to segregate such legal costs between the two categories merits barring the claim. *Id.*; *ACLR, LLC v. United States*, 2024 WL 4315111 at \*7 (unpublished opinion) (affirming trial court’s finding that legal fees potentially associated with settlement were not recoverable “because [the contractor] failed to segregate its costs and show that what it was seeking for this period were reasonable charges.”). Reasonable attorney fees incurred in preparation of a termination settlement proposal and in attempting to negotiate an amicable resolution may be compensable. *SWR, Inc.*, 15-1 BCA ¶ 35,832 at 175,231 (citing *Dairy Sales Corp.*, 593 F.2d at 1006). However, there is “a strong presumption against recovery of legal fees and consultant costs . . . when litigation has commenced and none of the tasks are required by the contract.” *Info. Sys. & Networks Corp.*, ASBCA No. 42659, 00-1 BCA ¶ 30,665 at 151,423. Globe was required to segregate its T4C settlement expenses from costs incurred to develop CDA claims for prosecution. *Alfair Dev. Co.*, ASBCA Nos. 53119, 53120, 05-2 BCA ¶ 32,990 at 163,516.

## **II. Globe's Claimed Legal Fees**

As noted above, attorney fees may be allowable if they were incurred in preparing a termination settlement proposal or in attempting to negotiate an amicable resolution; however, fees associated with litigating against the government are unallowable.

### **A. Trenam Law**

Globe's claim for \$346.50 in fees paid to Trenam Law for legal services in preparing its TSP I involves work performed before TSP I was submitted (R4, app. supp. tab 819 at GLOBE.SUPP283). DCAA did not question the costs paid to Trenam, and the government concedes that Globe is "likely entitled to recover" the costs (gov't resp. at 6). Accordingly, we find that Globe is entitled to the \$346.50 in legal fees for work performed by Trenam Law.

### **B. Watson & Associates LLC**

Globe's claim for \$8,700 in legal fees paid to Watson & Associates (app. supp. R4, tab 819 at GLOBE.SUPP283) similarly represents work performed before the CO issued his decision on the TSP I and, thus, before the start of litigation. The government concedes that Globe may be entitled to recover "some reasonable amount" of fees but argues that Globe has not established that the entire claimed amount was allowable because Globe has not provided evidence of the exact nature of the services provided (gov't resp. at 7). We find the Watson & Associates LLC fees to be reasonable and award Globe \$8,700.

### **C. Seidman & Associates**

Globe seeks \$383,281.43 in legal fees paid to Seidman & Associates. Unlike the law firms above, Seidman also represented Globe in litigation before the Board. Globe retained Seidman on December 8, 2016 and Globe filed its appeal to the Board on December 29 of that year. However, Seidman's representation included the period after February 24, 2017 when the parties jointly requested a stay to prepare TSP II, that was submitted on June 30, 2017. As noted above, TSP II included constructive change claims not related to the termination settlement. *Globe Trailer I*, 19-1 BCA ¶ 37,392 at 181,783. Seidman also sought a settlement meeting in July 2017 and submitted a partial settlement offer in September 2017.

Seidman's representation involved clearly non-compensable litigation costs and compensable work on the TSP II, as well as work on negotiating a settlement that may be compensable in some situations. Globe contends that Seidman segregated out litigation costs by using separate billing codes for termination settlement work and

termination settlement litigation. However, it is clear from the record that unallowable litigation costs are included in the settlement costs. For example, Globe includes all of the roughly \$250,000 cost of preparing TSP II in its claim (app. supp. R4, tab 815 at GLOBE.SUPP100-17). As noted above, TSP II included millions of dollars in constructive change claims. While the work on TSP II may be an allowable settlement expense, due to the COs direction to prepare TSP I on an inventory basis, only that portion of TSP II pertaining to termination settlement would be recoverable.

The portions of the settlement proposal advancing constructive change claims also represent litigation expenses not subject to reimbursement. *ACLR*, 157 Fed. Cl. at 340; *Dairy Sales*, 593 F.2d at 1006. The litigation expenses of asserting Globe's constructive change claims contained in TSP II have not been segregated, and make the entire amount unrecoverable. Similarly, we find Seidman's purported allocation of half of costs associated with work that benefitted both the TSP and litigation to the termination settlement proposal to be unsubstantiated. Work that was performed for litigation purposes, even if it also benefited Globe's attempt to negotiate a settlement of the termination for convenience is still a litigation expense. This is especially true where, as here, the termination settlement advanced constructive change claims not related to the termination. Globe argues that the legal fees associated with the constructive change claims should be allowed because the costs were being pursued as part of a settlement and were not converted to a claim until June 2020 (app. reply br. at 7-8). The fact that the constructive change cost had not yet been asserted as a claim does not change the fact that they are not recoverable in the context of a termination settlement proposal.

We decline to apply a jury verdict to guess as to the portion of TSP II representing allowable costs. A jury verdict is appropriate where an appellant is able to establish entitlement, but where the contractor is unable to quantify damages for a justified reason. *See, D2 Government Sols.*, ASBCA No. 63030, 24-1 BCA ¶ 38,688 at 188,099 (citing *Am. Boys Constr.*, ASBCA No. 60515, 17-1 BCA ¶ 36,856 at 179,590). Here Globe could have isolated the claimed costs for legal fees associated with the constructive change claims, but did not. Accordingly, Globe's claim for legal fees paid to Seidman is denied.

#### **D. Jackson Kelly PLLC**

Globe seeks reimbursement of \$25,934.14 in legal fees paid to Jackson Kelly PLLC. As noted above, Jackson Kelly PLLC represented Globe between April 2018 and August 2019. This was long after litigation was initiated and the engagement began nearly a year after the submission of TSP II. It was also after the government rejected Globe's request for a settlement meeting, and after the government rejected Globe's settlement offer. Globe contends that Jackson Kelly PLLC assisted Globe in attempting to settle its dispute (app. br. at 14-15). Globe contends that it redacted

certain of the time entries on Jackson Kelly’s invoices, removing the litigation costs associated with those entries from the amount claimed (app. supp. R4, tab 817 at GLOBE.SUPP233-39; app. reply br. at 10-11 (explaining the calculation of claimed amounts)).

As noted above, several of the unredacted time entries (and thus entries for which Globe seeks reimbursement) contain descriptions reasonably interpreted as litigation tasks. For example, the entries on May 6 and May 7, 2018 for Mr. Whytsell have descriptions of “[r]eviewing materials from client; analyzing legal issues concerning same; reviewing case law” and “[a]nalyzing legal issues concerning case and potential strategy . . .” respectively (app. supp. R4, tab 817 at GLOBE.SUPP238). Given the strong presumption that legal fees incurred during litigation are unrecoverable, *Info. Sys. & Networks Corp.*, 00-1 BCA ¶ 30,665 at 151,423, we determine that Globe is not entitled to recover its claimed legal fees paid to Jackson Kelly PLLC.

#### **E. Stinson LLP**

Globe seeks reimbursement of \$31,168.50 in legal fees paid to Stinson LLP. Stinson’s representation began September 2019 and continued through the parties’ partial settlement of the appeal. The declaration of Globe’s former counsel at Stinson, Mr. Whytsell, asserts that the invoices attached to his declaration reflect “the time expended on behalf of Globe Trailer [redacted in original] in ASBCA No. 60979” (app. supp. R4, tab 816 ¶ 7). The declaration additionally asserts that the invoices “are a true and accurate copy of the Firm’s invoices to Globe Trailer [redacted in original]” (*id.* ¶ 8). These statements are followed by three paragraphs redacted in their entirety (*id.* ¶¶ 10-12). Globe does not claim that it is asserting a privilege for the redactions. Globe further fails to explain the purpose of its redactions.<sup>2</sup> As a result, we consider the declaration to have no probative value.

In addition, we note that the supporting invoices contain numerous entries that represent litigation activities not related to the termination settlement. For example, there are charges for “Analyze[ing] legal issues concerning constructive change claim” (*id.* at GLOBE.SUPP222), “Draft claim for constructive changes” and “Continue drafting claim for constructive changes” (*id.*). Another charge included the description “formulate strategy for upcoming meeting with Government lawyers; formulate research and offensive discovery strategy for settlement costs/constructive change elements of case” (*id.* at GLOBE.SUPP193), and exchanging emails “concerning draft

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<sup>2</sup> We note that Globe included a legend reading “Contains Confidential and Proprietary Information Not to Be Disclosed Outside the US Government” on documents in its Final Supplemental Rule 4 file. Globe has not requested entry of a protective order in this appeal pursuant to Board Rule 8(a).

Complaint and response to Government inquiry about CLIN0006AA" (*id.* at GLOBE.SUPP185).

In addition to entries regarding the constructive change claim, the invoices contain multiple entries regarding litigation work in reviewing the settlement agreement (*id.* at GLOBE.SUPP163; GLOBE.SUPP165). Pursuant to the terms of that settlement agreement, Globe released any claim for attorneys fees with regard to the settlement (R4, tab 34 at G346).

“The essential elements of an effective accord and satisfaction are proper subject matter, competent parties, meeting of the minds of the parties, and consideration.” *Mil-Spec Contractors, Inc. v. United States*, 835 F.2d 865, 867 (Fed. Cir. 1987) (citations omitted). An accord and satisfaction bars further recovery. *Costar III, LLC*, ASBCA No. 56479, 11-2 BCA ¶ 34,830 at 171,370. A release is a contractual defense and must be interpreted in the same manner as any other contract term or provision. *See, e.g., Bell BCI Co. v. United States*, 570 F.3d 1337, 1341 (Fed. Cir. 2009) (citing *Metric Constructors, Inc. v. United States*, 314 F.3d 578, 579 (Fed. Cir. 2002)). We find that Globe released its claim for attorney fees pertaining to the 2020 settlement in the partial settlement agreement when it accepted payment in “full satisfaction” of “any and all claims including costs, attorney’s fees and interest” (R4, tab 34 at G346).

Given the strong presumption that legal fees incurred during litigation are unrecoverable, *Info. Sys. & Networks Corp.*, 00-1 BCA ¶ 30,665 at 151,423, Globe is not entitled to recover its claimed legal fees paid to Stinson LLP.

### **III. Globe’s Claimed Expert Fees**

#### **A. Capital Edge**

Globe seeks recovery of \$1,260 paid to Capital Edge Consulting (app. br. at 11). These costs were incurred before Globe submitted its TSP I. The government agrees that Globe is “likely entitled” to recover the costs (gov’t resp. at 6). Accordingly, we award \$1,260 in costs to Globe as repayment of the Capital Edge costs.

#### **B. Kenrich Group**

Globe seeks repayment of \$218,606.25 in costs paid to the Kenrich Group for its review of TSP I and help in preparing TSP II (app. br. at 17-18). The analysis here is similar to that for Globe’s legal fees. Globe’s choice to assert constructive change claims in its TSP II means that it included litigation expenses in its TSP II claim. Just as legal fees for litigation against the government are unallowable, the fees for experts

retained through law firms for litigation work are also unallowable. *Info. Sys. & Network Corp.*, 00-1 BCA 30,665 at 151,423. Here, Kenrich's billing records include references to work on a request for equitable adjustment (app. supp. R4, tab 818 at GLOBE.SUPP272). Further, it is apparent that "settlement costs" include the costs of the constructive change claims asserted in TSP II. We deny Globe's request for reimbursement of the Kenrich consulting fees for the same reasons that we denied the legal fees for Seidman LLP, the law firm that originally retained Kenrich.

#### **IV. Globe's Internal Labor For Claim Preparation And Related Costs**

In addition to seeking recovery for outside legal and professional costs, Globe seeks to recover its internal payroll costs and the costs of its payroll consulting firm. Globe also seeks general and administrative expenses on these internal costs.

##### **A. Globe's Internal Payroll Costs**

Globe seeks \$78,592.45 in termination costs for its employees' work in 2014 preparing the TSP I and responding to data requests from the government (app. supp. R4, tab 788). For 2015, Globe seeks \$74,957.45 largely attributed to responding to DCAA and DCMA requests (app. supp. R4, tab 789). Globe seeks \$40,994.09 in termination costs for 2016, attributed to settlement negotiations (app. supp. R4, tab 790). Finally, for 2017, Globe seeks \$61,980.85 in termination costs primarily for preparation of TSP II (app. supp. R4, tab 791). Globe seeks reimbursement of \$19,624.15 in payroll taxes consisting of the employer share of Social Security Taxes (6.2%) and Medicare (1.45%) or 7.65% total (app. supp. R4, tab 792).

The supporting documentation for these costs is limited to a spreadsheet for each year. Globe's counsel represents that it "separated and itemized its payroll and employee costs associated with the termination" (app. br. at 19); however, the spreadsheets are cryptic at best. There are multiple entries with the limited description of "Workforce Business Services" (app. supp. R4, tabs 788-89). Appellant's counsel points to Brian Kalamanka's deposition that "Workforce Business Services processed employee payroll, and entries with that description were for employees allocated to the T4C work" (app. br. at 20 (citing R4, tab 36 at G463)). However, Mr. Kalamanka further testified that the methodology for allocating personnel to the termination for convenience work is not reflected in the exhibits and that he did not know if the underlying spreadsheets had been produced to the government (R4, tab 36 at G464-65). At best, we have Mr. Kalamanka' deposition testimony that he had the staff track their time in spreadsheets (*id.* at G464). The underlying documents do not appear to be in the record in this appeal, and have not been cited by appellant.

Additionally, \$116,000 of Globe's roughly \$250,000 internal payroll claim represents reimbursement for the work of one of its officers, Mr. Jeffrey Walters, Jr.

Globe claims \$116,000, comprised of \$25,000 for Mr. Walters in 2014 (app. supp. R4, tab 788); \$24,000 in 2015 (app. supp. R4, tab 789); \$27,000 in 2016 (app. supp. R4, tab 790); and \$40,000 in 2017 (app. supp. R4, tab 791). These claimed amounts are based solely on Mr. Walters' own estimates of his time during that period, and are not supported by any documentation (R4, tab 36 at G466). Mr. Walters testified that he was not the primary contact with DCMA during the TSP communications (R4, tab 37 at G655), did not prepare any part of Globe's TSP I (*id.* at G656), and did not track his time during that period (*id.* at G657).

Globe has the burden of proof to establish entitlement to reimbursement of costs. Here, we find that Globe has not established entitlement to the claimed costs. We are presented with nothing other than a spreadsheet, without supporting documentation and the deposition testimony of a Globe employee. While deposition testimony can support evidence of claimed costs, the standard of review is the preponderance of the evidence. Here the underlying costs are lacking in support and we hold that the deposition testimony was not sufficient to establish that the costs were properly calculated.

Globe could have submitted a declaration, with supporting documentation, to establish the costs, but did not. Here, the \$160,000 in claimed costs for Mr. Walters look to be an estimate based on nothing more than a guess prepared after the fact. Given Mr. Walter's deposition testimony as to his lack of involvement in preparing TSP II, and his inability to even recall whether he was paid a salary (*id.* at G692), we find the costs to be unsupported. Because the costs are unsupported, we also deny Globe's request for payroll taxes on the claimed costs.

## **B. MDTV Project Solutions**

Globe seeks reimbursement of \$60,480 in consulting costs paid to MDTV. The MDTV costs are for work performed by Mr. Kalamanka on TSP I before he became a Globe employee (R4, tab 36 at G389, G534). We found the Globe internal payroll costs to be unsupported. However, the MDTV costs do not suffer from that defect. Globe has submitted a summary of the hours claimed (app. supp. tab 793) and provided supporting documentation and descriptions of the work (app. supp. R4, tabs 749-813). The DCAA audit report of TSP I reviewed the claimed MDTV costs and did not question the costs (R4 tab, 28 at G297).

The government challenges the MDTV costs by alleging that Globe has not established that Mr. Kalamanka's hourly rate was reasonable, and that the invoices lack sufficient detail to demonstrate that the charges were incurred in preparing the termination settlement proposal and were reasonable (gov't resp. at 22-23). Mr. Kalamanka's deposition testimony supports a finding that the work performed was in support of the termination settlement (R4, tab 36 at G389, G463, G529-30, G533-34).

Further, we note that the DCAA audit did not question Mr. Kalamanka's hourly rate, finding the costs to be "reasonable and allowable" (R4, tab 28 at G297). Accordingly, Globe is entitled to recover the \$60,480 paid to MDTV.

### **C. G&A Applied To Settlement Costs**

Globe seeks reimbursement of general and administrative (G&A) costs of \$286,965.53 using G&A rates of 90.76% for 2014 (app. supp. R4, tab 821 at GLOBE.SUPP286); 73.22% for 2015 (app. supp. R4, tab 823 at GLOBE.SUPP292); 124.3% for 2016 (app. supp. R4, tab 825 at GLOBE.SUPP298); and 106.9% for 2017 (app. supp. R4, tab 827 at GLOBE.SUPP304). Globe applied these G&A rates to the internal payroll costs discussed above, as well as the MDTV costs.

The government objects to Globe's claimed G&A costs for two reasons. First the government contends that Globe improperly seeks G&A on costs that are not reasonable and recoverable G&A costs (gov't resp. at 23-24). As we held above that Globe had not demonstrated that it was entitled to its claimed internal labor costs, we deny Globe's request for G&A on those costs.

The government next argues that Globe improperly calculated its G&A costs on a single element cost input base using labor costs, resulting in an inequitable allocation (gov't resp. at 24). Determining the proper allocation base is a complicated fact-dependent accounting question. Here, the government's entire argument is to state that the use of labor as the allocation base "results in an inequitable allocation" (gov't resp. at 24). As Globe notes, direct labor is a permissible allocation base (app. reply br. at 19 (citing 48 CFR § 9904.418-50(d))). Because this is a fixed-price contract, Globe was not required to comply with government cost-accounting regulations. However, the FAR still provides that the TSP should be calculated based on "accounting principles consistently followed by the contractor." FAR 49.206-1(c). Globe has not placed its normal accounting procedures on the record. Further, the parties make no representations as to whether or how G&A was addressed in the partial settlement or in the final decision.

The DCAA audit report indicates that Globe's TSP I applied a G&A rate to direct contract costs, but that Globe could not substantiate the claimed direct costs, so DCAA did not offer an opinion on the claimed G&A rate (R4, tab 28 at GLOBE.SUPP296). Globe argues that the G&A costs align with labor costs because they are tied to the termination settlement and not the acquisition of materials (app. reply br. at 19). The government contends that the allocation base should include the cost of goods sold, which would result in a lower G&A rate. According to the government, this change in calculation of the G&A rate in 2014 would result in the rate decreasing from 90.76% to 16.5% (gov't resp. at 24 n.20).

Globe calculated its G&A rate using a single element cost input base of direct labor (app. supp. R4, tabs 820, 822, 824, 826). Such a calculation does not consider Globe's cost of goods sold. For example, in 2014, Globe's COGS was \$9,259,209.84 (app. supp. R4, tab 821 at GLOBE.SUPP285). The government's contention that the G&A rate should be 16.5% appears to suggest adding the COGS to the direct labor costs to calculate the allocation base (app. supp. R4, tab 821).<sup>3</sup> However, it would appear that the government's proposed calculation would double-count direct labor (the labor actually used to build the semi-trailers) in the allocation base. Instead, we use COGS<sup>4</sup> as the allocation base, because it appears that Globe used total direct costs in its initial TSP, and because the proper allocation depends on not only the labor costs at issue here, which is just one part of the termination settlement, but also on the costs that have already been settled by the parties that would have included material costs. Thus, we determine that the proper G&A rate is 20.23%.<sup>5</sup>

Based on the limited information before us, we hold that Globe is entitled to G&A calculated at 20.23% for the MDTV contract amounts.<sup>6</sup> We grant Globe \$12,235.10 in G&A expenses calculated at 20.23% of the claimed \$60,480 in MDTV expenses.<sup>7</sup> As we denied Globe's claimed internal payroll costs, we do not award G&A on those costs.

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<sup>3</sup> \$1,873,200.26 claimed GA / (\$2,063,841.04 direct labor + \$9,259,209.84 COGS) = 16.5%.

<sup>4</sup> We recognize that GOGS may include allocations of overhead costs that would result in a G&A rate that is lower than would be permitted; however, COGS is the closest thing to total direct cost in the record.

<sup>5</sup> \$1,873,200.26 claimed GA / \$9,259,209.84 COGS = 20.23%.

<sup>6</sup> We note that, to the extent Globe states that its 90.76% G&A rate is calculated using a single element direct labor hours base (app. reply br. at 19) Globe would collect nothing using its proposed G&A rate because the MDTV costs are not direct labor and would not be burdened with an allocation of G&A expenses.

<sup>7</sup> Globe's G&A calculation includes \$60,399 in 2014 (app. supp. R4, tab 820 at GLOBE.SUPP284), versus the \$60,480 claimed above. We do not see an explanation for the \$81 discrepancy in the record. We further note that the hours claimed in app. supp. R4, tab 793 at the claimed \$60 per hour rate total \$60,840, rather than the claimed \$60,480.

## **V. Storage And Inventory Costs**

Globe's final category of termination settlement costs is storage and inventory costs. Specifically, Globe seeks \$42,000 for storage of a government-furnished trailer, plus \$41,290.07 in other storage costs.

### **A. Storage Of Government Trailer**

Globe seeks \$42,000 in reimbursement for storage of a government trailer. The charge is calculated as \$3,500 per month for 12 months (app. supp. R4, tab 701). As detailed above, Globe asserts that this is based on an unsigned lease agreement, dated over a year before contract award, with Globe Real Property Rental for \$3,500 per month for twelve months for a property at 6002 31st St. East, Bradenton, Florida (app. supp. R4, tabs 699; 701). However, the government notes that the property is owned by American Torch Tip Ltd. according to Florida property records (*see* <http://www.manateepao.gov/parcel/?parid=1775821653>). Globe contends, without any citation to record evidence, that American Torch Tip Ltd. leased the property to Gator Air Conditioning, a sister company of Globe that then sub-leased the property to Globe through Globe Real Property Rental (app. reply br. at 20).

Globe contends that record tab 695 is the correct lease agreement (*id.*). However, tab 695 is a lease between American Torch Tip and Gator Air Conditioning for an entirely different property located at 6216 28th St. East, Bradenton, Florida (app. supp. R4, tab 695 at 1). The fact that this is a different property is confirmed by app. supp. R4, tab 696, an email from Mr. Kalamanka to an employee at the Kenrich Group that refers to the lease as "a third party lease with a sister company of Globe that is for *a similar building* and land less than 1 mile from here" (app. supp. R4, tab 696 at 1) (emphasis added). Mr. Kalamanka's deposition testimony further establishes that the \$3,500 per month was an estimated market value and not an amount actually paid (R4, tab 36 at G503). Thus the record is unclear as to which property was actually used to store the government trailer, and whether Globe paid the claimed storage costs, or is claiming the equivalent market value for the storage.

The government contends that there is no evidence in the record that Globe actually paid or owed \$42,000 for rental of the property (gov't resp. at 25). The government further contends that there is no evidence that the \$3,500 per month rental of the entire property represents the fair market value to store a single trailer (*id.*). We agree and additionally note that even if Globe had proof of payment of the \$3,500 per month, the self-dealing transaction through two affiliated companies, Gator Air Conditioning and Globe Real Property Rental, would raise further reasonableness questions. We deny Globe's claim for \$42,000 for storage of a government trailer.

## **B. Storage Of Project Trailers & Inventory**

The government does not object to Globe's claimed costs totaling \$41,290.07 for storage of project trailers and inventory. Accordingly, the costs are undisputed and we award the requested \$41,290.07.

### **CONCLUSION**

For the reasons stated above, we award Globe \$124,311.67, plus CDA interest. The briefing is unclear as to whether the government has already paid Globe the \$10,000 awarded in the CO's final decision. The award should be reduced by that amount if already paid.

Dated: December 30, 2025

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

I concur

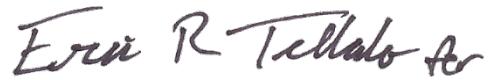
  
OWEN C. WILSON  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

I concur

  
MICHAEL N. O'CONNELL  
Administrative Judge  
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. 60979, Appeal of Globe Trailer Manufacturing, Inc., rendered in conformance with the Board's Charter.

Dated: January 5, 2026



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