

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
PDO Ahuska Joint Venture LLC) ASBCA No. 64164
Under Contract No. W56HZV-20-C-L857)

APPEARANCE FOR THE APPELLANT: Mr. Robert M. Pastorelli
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MAJ Joseph Van Dusen, JA
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OPINION BY ADMINISTRATIVE JUDGE SWEET

On March 18, 2026, *pro se* appellant PDO Ahuska Joint Venture LLC (Ahuska) moved for partial summary judgment, arguing that there is no genuine issue of material fact that its contract with the United States Army (government) required it to provide a 120 mile-per-hour (mph) wind speed roof membrane warranty.¹ On April 17, 2026, the government filed a cross-motion for partial summary judgment, and a motion for sanctions on the grounds that all of the cases Ahuska cited in its motion are fictitious and apparently generative artificial intelligence (AI) hallucinations. For the reasons discussed below, we grant the government's motion for sanctions, grant Ahuska's motion for partial summary judgment, and deny the government's cross-motion for partial summary judgment.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

I. The Contract

1. On September 24, 2023, the government awarded to Ahuska Contract No. W56HZV20CL857 (Contract), a firm-fixed price contract for the design and

¹ Because Ahuska focus narrowly on the issue of whether the contract required a roof membrane warranty that covered 120 mph wind speeds, we only address that issue, and do not address other issues, such as the requirements of the roof system installer warranty (app. mot. 1).

construction of a replacement multi-ply weatherproof membranes modified bitumen roof system for Building 210 at the Detroit Arsenal (R4, tab 1 at 1, 57; SUMF ¶¶ 1-2).²

2. The Contract contained three relevant statement of work (SOW) provisions. First, SOW § 2.4.1.14.5 (Roofing General Requirements) indicated that “[t]he new roof shall have a wind uplift resistance for 120 mph wind speed, fire resistance rating, [Factory Mutual (FM)] or [Underwriters Laboratories (UL)] approved, including roof membrane manufacturer’s 20-year no dollar limit roof system materials & installation workmanship warranty” (R4, tab 1 at 57; SUMF ¶ 3(a)) Second, SOW § 2.4.1.14.33 (Warranty) stated that:

The contractor shall provide roof system material and workmanship warranties meeting specified requirements in accordance with [Contract Data Requirements List (CDRL)] A010. The contractor shall provide revision or amendment to standard membrane manufacturer warranty as required to comply with the specified requirements. Minimum manufacturer warranty shall have no dollar limit, cover full system water-tightness, and shall have a minimum duration of 20 years.

(R4, tab 1 at 63-64; SUMF ¶ 3(b)).³ Third, SOW § 2.4.1.14.34 (Roof Manufacturer Warranty) required Ahuska to:

Furnish the roof membrane manufacturer’s 20-year no dollar limit roof system materials and installation workmanship warranty, including flashing, insulating in compliance with [American Society for Testing and Materials (ASTM)] C1289, and accessories necessary for a watertight roof system construction. Provide warranty to the Government in accordance with CDRL A010 The warranty must state that:

2.4.1.14.35 If within the warranty period the roof system, as installed for its intended use in the normal climatic and environmental conditions of the facility, becomes

² “SUMF” refers to the stipulation of undisputed material facts for purposes of appellant’s motion for summary judgment and the government’s cross-motion for partial summary judgment jointly submitted by the parties.

³ CDRL A10—which was included as an appendix to the Contract—described how Ahuska should submit various closeout documents, including the warranties (R4, tab 3 at 170).

non-watertight, shows evidence of moisture intrusion within the assembly, blisters, splits, tears, delaminates, separates at the seams, or shows evidence of excessive weathering due to defective materials or installation workmanship, the repair or replacement of the defective and damaged materials of the roof system assembly and correction of defective workmanship are the responsibility of the roof membrane manufacturer. All costs associated with the repair or replacement work are the responsibility of the roof membrane manufacturer[.]

(R4, tab 1 at 64; SUMF ¶ 3(c)) The Contract did not define the term “the normal climatic and environmental conditions,” or indicate that it included a particular wind-speed (*id.*)

3. The Contract also incorporated by reference Federal Acquisition Regulation (FAR) 52.215-8, ORDER OF PRECEDENCE-UNIFORM CONTRACT FORMAT (oct 1997), which indicated that any inconsistency in the Contract shall be resolved by giving preference in the following order: (1) the schedule; (2) representations and other instructions; (3) contract clauses; (4) other documents, exhibits, and attachments; and (5) the specifications (R4, tab 1 at 121). 48 C.F.R. § 52.215-8.

4. After the notice to proceed, the government approved Ahuska’s 100% design using Firestone as the membrane manufacturer. While Firestone’s membranes modified bitumen roof system met the 120 mph wind speed requirement, its standard warranty language only covered wind speeds of 90 mph. The government refused to work with Firestone, requiring Ahuska to use another membrane manufacturer—James Manville. Ahuska alleges that switching membrane manufacturers caused delay, and that Ahuska incurred extra expenses obtaining a 120 mph wind speed warranty. (R4 tab 285, at 2688)

II. Briefing

5. On March 18, 2026, Ahuska submitted an executed motion for partial summary judgment that contained two single-spaced pages of briefing (app. mot.). In total the summary judgment motion cited the following five cases in support of the following contentions:

- a. “Contract interpretation is a question of law suitable for summary judgment where the contract language is unambiguous. *Lockheed Martin Corp.*, ASBCA No. 57525, 13-1 BCA ¶ 35,241.” (*Id.* at 2).

- b. “ASBCA precedent has repeatedly held that warranties may not be expanded beyond their express terms or implied from performance specifications. See *Metric Constructors, Inc.*, ASBCA No. 50843, 99 1 BCA ¶ 30,134; *Blinderman Constr. Co.*, ASBCA No. 55770, 09 2 BCA ¶ 34,257; *J. A. Jones Constr. Co.*, ASBCA No. 38679, 90-3 BCA ¶ 23,241.” (*Id.* (citation format errors in original)).
- c. “Performance requirements governing design do not transform into warranty guarantees absent clear contractual language. See *Alliance Roofing & Sheet Metal, Inc.*, ASBCA No. 59663, 16 1 BCA ¶ 36,387.” (*Id.* (citation format errors in original)).

6. The citation to *Lockheed Martin Corp.*, ASBCA No. 57525, 13-1 BCA ¶ 35,241, discussed in SOF ¶ 5(a) is fictitious and appears to be an AI hallucination. The appeal that 13-1 BCA ¶ 35,241 addresses is *Raytheon Missile Systems*, ASBCA No. 58011, and that decision does not support the assertion that contract interpretation is a question of law suitable for summary judgment where the contract language is unambiguous. 13 BCA ¶ 35,241 at 173,015-16. Indeed, *Raytheon Missile Systems* addresses a motion for a declaration that the Board did not possess jurisdiction; not a summary judgment motion. *Id.* We address *Lockheed Martin Corp.*, ASBCA No. 57525 in a decision published at 12-1 BCA ¶ 35,017. However, *Lockheed Martin* does not support the assertion that contract interpretation is a question of law suitable for summary judgment where the contract language is unambiguous. 12-1 BCA ¶ 35,017. On the contrary, *Lockheed Martin* addresses a motion to dismiss for lack of jurisdiction; not a summary judgment motion. *Id.*

7. The citation to *Metric Constructors, Inc.*, ASBCA No. 50843, 99-1 BCA ¶ 30,134, discussed in SOF ¶ 5(b) is fictitious and appears to be an AI hallucination. The appeal addressed at 99-1 BCA ¶ 30,134 is *Bean Horizon-Weeks Marine (JV)*, ENGBCA No. 6398, and that non-binding decision does not support the assertion that warranties may not be expanded beyond their express terms or implied from performance specifications. 99-1 BCA ¶ 30,134 at 149,059-61. Indeed, *Bean Horizon* does not address warranties at all. *Id.* We address *Metric Constructors, Inc.*, ASBCA No. 50843 in a decision published at 98-2 BCA ¶ 30,088. However, *Metric Constructors* does not support the assertion that warranties may not be expanded beyond their express terms or implied from performance specifications. 98-2 BCA ¶ 30,088. In fact, *Metric Constructors* does not address warranties at all. *Id.*

8. The citation to *Blinderman Constr. Co.*, ASBCA No. 55770, 09-2 BCA ¶ 34,257, discussed in SOF ¶ 5(b) is fictitious and appears to be an AI hallucination. The appeal that 09-2 BCA ¶ 34,257 addresses is *Vibration and Sound Solutions, LTD*, ASBCA No. 56240, and that decision does not support the assertion that warranties may not be expanded beyond their express terms or implied from performance specifications. 09-2 BCA ¶ 34,257. Indeed, *Vibration and Sound Solutions* does not address warranties at all. *Id.* We have about 17 published decisions with the title *Blinderman*, none of which address ASBCA No. 50843, and none of which support the assertion that warranties may not be expanded beyond their express terms or implied from performance specifications. In fact, none of the *Blinderman* appeals address the provision of warranties at all. ASBCA No. 55770 is the docket number for *AMES Corporation*, which settled prior to the issuance of a decision.

9. The citation to *J. A. Jones Constr. Co.*, ASBCA No. 38679, 90-3 BCA ¶ 23,241, discussed in SOF ¶ 5(b) is fictitious and appears to be an AI hallucination. The appeal that 90-3 BCA ¶ 23,241 addresses is *Goetz Demolition Co.*, ASBCA No. 39129, and that decision does not support the assertion that warranties may not be expanded beyond their express terms or implied from performance specifications. 90-3 BCA ¶ 23,241. Indeed, *Goetz Demolition* does not address warranties at all. *Id.* We have about 18 published decisions with the title *J. A. Jones Construction*, none of which address ASBCA No. 38679, and none of which support the assertion that warranties may not be expanded beyond their express terms or implied from performance specifications. In fact, none of the *J. A. Jones Construction* appeals address the provision of warranties at all. ASBCA No. 38679 is the docket number for *Camel Manufacturing Company, Inc.*, which does not have a published decision.

10. The citation to *Alliance Roofing & Sheet Metal, Inc.*, ASBCA No. 59663, 16-1 BCA ¶ 36,387 discussed in SOF ¶ 5(c) is a miscitation, but most likely a typographical error. While there is no decision in *Alliance Roofing & Sheet Metal, Inc.*, ASBCA No. 59663 published at 16-1 BCA ¶ 36,387, there is a decision in that appeal published at 15-1 BCA ¶ 35,981. *Alliance Roofing & Sheet Metal, Inc.*, ASBCA No. 59663, 15-1 BCA ¶ 35,981. Moreover, that decision addresses warranties. *Id.* at 175,805-06.

11. In response, the government filed an opposition to Ahuska's motion for partial summary judgment, cross-motion for partial summary judgment, and motion for sanctions (gov't mot). In particular, the government moved for sanctions on the grounds that all of the cases cited in Ahuska's motion for partial summary judgment are fictitious and appear to be AI hallucinations. *Id.*

12. Within 11 days, Ahuska filed a response withdrawing all of the citations in its motion for partial summary judgment, except for *Alliance Roofing* (app. resp. at 1-2).

DECISION

For the reasons discussed below, we grant the government's motion for sanctions, grant Ahuska's motion for partial summary judgment, and deny the government's cross-motion for partial summary judgment.

I. We Grant the Government's Motion for Sanctions

We grant the government's motion for sanctions, and strike the fictitious citations in Ahuska's motion for partial summary judgment and the contentions that rely upon those citations. We look to Federal Rule of Civil Procedure (Rule) 11 for guidance in resolving sanctions motions. *Globe Constr. Co.*, ASBCA No. 21365, 78-2 BCA ¶ 13,486 at 66,005, *aff'd*, 230 Ct. Cl. 957 (1982). Under Rule 11, anyone who submits a written motion certifies that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. FED. R. CIV. P. 11(b). Submitting a filing citing fictitious cases violates Rule 11. *Huffman Constr.*, ASBCA Nos. 62591, 62783, 25-1 BCA ¶ 38,932 at 189,485. Indeed, the Board's home-page contains a highlighted caution "that AI tools may generate inaccurate legal analysis and that any party using such tools in preparing filings before the Board remains responsible for independently verifying their accuracy and may be subject to sanctions for resulting errors." www.asbca.mil.

Rule 11 permits sanctions, so long as they are limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. FED. R. CIV. P. 11(c)(4). When determining what sanctions are appropriate, the Board considers factors such as "the presence or absence of willfulness; the degree of prejudice to the parties; the delay, burden, and expense incurred by the movant; and evidence of compliance with other Board orders." *Huffman*, 25-1 BCA ¶ 38,932 at 189,485 (quoting *Bruce E. Zoeller*, ASBCA No. 56578, 10-2 BCA ¶ 34,549 at 170,390). The Board also considers the presence of "bad faith, callous disregard of responsibilities or any other behavior which reasonably could be construed as a basis for sanctions" *Id.* (citing *Hettich and Co. GmbH*, ASBCA No. 38781, 93-1 BCA ¶ 25,442 at 126,698).

In particular, in deciding whether to strike an entire brief containing fictitious citations, or only the fictitious citations and the contentions supported by those citations, we have considered whether it is possible to strike only particular citations and contentions without rendering the brief nonsensical given the number of errors,

and whether the offending party has had an opportunity to present its arguments in an opening brief. *Id.* (striking a post-hearing reply brief with fictitious citations to case-law, the Rule 4 file, and hearing transcripts). While the fact that a litigant is *pro se* does not entirely exclude that litigant from Rule 11, it may impact the type of sanctions a tribunal imposes. *Id.*

Here, sanctions are appropriate under *Huffman* because four of the five cases cited by Ahuska—or 80% of the citations—in its motion for partial summary judgment are fictitious (SOF ¶¶ 6-10).⁴ In terms of the type of sanctions, the government only requests that we strike the fictitious citations and the contentions supported by those citations (gov’t mot. at 16). That is appropriate in light of the factors identified in *Huffman*. See 25-1 BCA ¶ 38,932 at 189,485. Therefore, we strike the fictitious citations and contentions supported by those citations.

Ahuska argues that the fictitious citations were unintentional (app. reply at 1-2). However, as *Huffman* recognized, the sheer number and magnitude of errors suggests a blatant disregard of Ahuska’s obligation to ensure that cases cited to the Board in its brief actually exist, which is a sufficient basis for imposing sanctions. 25-1 BCA ¶ 38,932 at 189,486. Further, we are imposing a less severe sanction than we imposed in *Huffman* by merely striking particular citations and contentions.

Ahuska also argues that the fictitious citations did not cause prejudice (app. reply at 2). However, as *Huffman* recognized, there was substantial prejudice to the government and the Board due to the significant amount of time required to determine the fictitiousness of the citations. *Huffman*, 25-1 BCA ¶ 38,932 at 189,486. Nor did Ahuska’s withdrawal of the fictitious citations eliminate the prejudice because Ahuska did not also withdraw the now-unsupported contentions, as Rule 11(c)(2) required. FED. R. CIV. P. 11(c)(2).

Thus, we strike the following fictitious citations and contentions supported by those citations:

- a “Contract interpretation is a question of law suitable for summary judgment where the contract language is unambiguous. *Lockheed Martin Corp.*, ASBCA No. 57525, 13-1 BCA ¶ 35,241.” (App. mot. at 2).

⁴ While Ahuska also miscites to the fifth case—*Alliance Roofing & Sheet Metal, Inc.*, ASBCA No. 59663, 16-1 BCA ¶ 36,387—that appears to be a typographical error (SOF ¶ 10). Therefore, that error is not a basis for sanctions. *Huffman*, 25-1 BCA ¶ 38,932 at 189,486.

- b. “ASBCA precedent has repeatedly held that warranties may not be expanded beyond their express terms or implied from performance specifications. See *Metric Constructors, Inc.*, ASBCA No. 50843, 99 1 BCA ¶ 30,134; *Blinderman Constr. Co.*, ASBCA No. 55770, 09 2 BCA ¶ 34,257; *Jones Constr. Co.*, ASBCA No. 38679, 90-3 BCA ¶ 23,241.” (*Id.* (citation and formatting errors in original)).

II. We Grant Ahuska’s Motion for Partial Summary Judgment and Deny the Government’s Cross-Motion for Partial Summary Judgment

We grant Ahuska’s motion for partial summary judgment, and deny the government’s cross-motion for partial summary judgment.

A. Summary Judgment Standard

In deciding motions for summary judgment, the Board looks to Rule 56 of the Federal Rules of Civil Procedure for guidance. Board Rule 7. We will grant summary judgment only if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). All significant doubt over factual issues must be resolved in favor of the party opposing summary judgment. *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390-91 (Fed. Cir. 1987). In deciding summary judgment motions, we do not resolve controversies, weigh evidence, or make credibility determinations. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Moreover, we draw all reasonable inferences in favor of the non-movant. *Id.* “A genuine issue of material fact arises when the nonmovant presents sufficient evidence upon which a reasonable fact-finder, drawing the requisite inferences and applying the applicable evidentiary standard, could decide the issue in favor of the nonmovant.” *C. Sanchez & Son, Inc. v. United States*, 6 F.3d 1539, 1541 (Fed. Cir. 1993). “The moving party bears the burden of establishing the absence of any genuine issue of material fact” *Colonna’s Shipyard, Inc.*, ASBCA No. 59987 *et al.*, 16-1 BCA ¶ 36,518 at 177,902 (citing *Mingus Constr., Inc. v. United States*, 812 F.2d 1387, 1390-01 (Fed. Cir. 1987)). “Once the moving party has met its burden of establishing the absence of disputed material facts, then the non-moving party must set forth specific facts, not conclusory statements or bare assertions, to defeat the motion.” *Id.* (citing *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 739 F.2d 624, 626-27 (Fed. Cir. 1984)).

B. There is no Genuine Issue of Material Fact but that the Contract Is Ambiguous and that that Ambiguity is Latent

There is no genuine issue of material fact but that the Contract is ambiguous as to whether it required a membrane manufacturer's warranty that covered a 120 mph wind speed, and that that ambiguity is latent. Our interpretation of a contract begins with the plain language, under which "clear and unambiguous contract provisions must be given their plain and ordinary meaning, and we may not resort to extrinsic evidence to interpret them." *CDM Constructors, Inc.*, ASBCA No. 60454, 18-1 BCA ¶ 37,190 at 181,012 (quoting *Coast Fed. Bank, FSB v. United States*, 323 F.3d 1035, 1038, 1040 (Fed. Cir. 2003) (en banc)). "An ambiguity exists when a contract is susceptible to more than one reasonable interpretation." *Id.* (quoting *E.L. Hamm & Assocs., Inc. v. England*, 379 F.3d 1334, 1341 (Fed. Cir. 2004)). When interpreting a contract, we read the contract as a whole, to the extent possible, giving meaning to all of its parts, and without leaving a portion of the contract useless, inexplicable, void, or superfluous. *JAAAT Technical Serv., LLC*, ASBCA No. 61180, 19-1 BCA ¶ 37,297 at 181,429.

"To show an ambiguity it is not enough that the parties differ in their respective interpretations of a contract term. Rather, both interpretations must fall within a 'zone of reasonableness.'" *CDM Constructors*, 18-1 BCA ¶ 37,190 at 181,012 (quoting *NVT Techs., Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004)). As we have held, "the language of the contract must be given that meaning that would be derived from the contract by a reasonably intelligent person acquainted with the contemporaneous circumstances." *Id.* (quoting *Hol-Gar Mfg. Corp. v. United States*, 351 F.2d 972, 975 (Ct. Cl. 1965)). Thus:

We must seek to put ourselves in the position of appellant at the time he bid on the contract, *i.e.*, we must seek the meaning that would be attached to the language by a reasonably intelligent bidder in the position of appellant, who would be expected to have the technical and trade knowledge of his industry and to know how to read and interpret technical engineering specifications and perform construction work in accordance with such specifications.

Id. (quoting *Adrian L. Roberson, d/b/a Roberson Construction Co.*, ASBCA No. 6248, 61-1 BCA ¶ 2,857 at 14,915).

If a contract contains conflicting terms, general rules of interpretation apply. *Abraham v. Rockwell Int'l. Corp.*, 326 F.3d 1242, 1254 (Fed. Cir. 2003). "Under these rules, where specific and general terms in a contract are in conflict, those which relate to a particular matter control over the more general language." *Id.*

(citations, quotation, and emphasis omitted); *see also Gen. Dynamics-Nat'l Steel and Shipbuilding Co.*, ASBCA No. 61524, 22-1 BCA ¶ 38,067 at 184,826. When contract provisions are in conflict or inconsistent, we also resort to order of precedence clauses. *DLT Solutions, LLC*, ASBCA No. 63069, 22-1 BCA ¶ 38,144. Moreover, if a contract is ambiguous, we may turn to extrinsic evidence to determine the parties' intent. *Gen. Dynamics-Nat'l Steel and Shipbuilding Co.*, 19-1 BCA ¶ 37,291 at 181,417 (citing *Beta Sys., Inc. v. United States*, 838 F.2d 1179, 1183 (Fed. Cir. 1988)).

If we still are unable to determine the parties' intent, we generally read the contract against the party that drafted the contract under the doctrine of *contra proferentem*. *R.L. Persons Constr., Inc.*, ASBCA No. 60121, 18-1 BCA ¶ 37,007 at 180,236 (citing *Turner Constr. Co. v. United States*, 367 F.3d 1319, 1321 (Fed. Cir. 2004)). However, if the ambiguity is sufficiently apparent that there was a patent ambiguity, then the contractor must inquire as to the meaning of that contract provision. *Id.* Because the doctrine of patent ambiguity has the effect of relieving the government of the consequences of its own poorly drafted contract, it is applied narrowly to those cases where the ambiguity is so patent and glaring that it is unreasonable for a contractor not to inquire about it. *R.L. Persons*, 18-1 BCA ¶ 37,007 at 180,236 (citing *Triax Pacific, Inc. v. West*, 130 F.3d 1469, 1475 (Fed. Cir. 1997)). An ambiguity is patent when it is "obvious, gross, or glaring, so that the contractor has a duty to inquire about it at the start." *Gen. Dynamics-Nat'l Steel and Shipbuilding*, 22-1 BCA ¶ 38,067 at 184,824 (quoting *NVT Tech., Inc.*, 370 F.3d at 1162). More subtle ambiguities are deemed latent and accorded an interpretation favorable to the contractor. *Id.*⁵

Here, as discussed in greater detail below, there is no genuine issue of material fact but that: (1) the Contract is ambiguous as to whether Ahuska had to provide a membrane manufacturer's warranty that covered a 120 mph wind speed; (2) extrinsic evidence, the order of precedence clause, and general rules of interpretation do not resolve that ambiguity; and (3) the ambiguity was latent—not patent. Thus, under the doctrine of *contra proferentem*, there is no genuine issue of material fact suggesting that Ahuska had to provide a membrane manufacturer's warranty that covered a 120 mph wind speed. *See R.L. Persons*, 18-1 BCA ¶ 37,007 at 180,236.

⁵ Contract interpretation—particularly the issues of whether a contract is ambiguous and any ambiguity is patent or latent—is a question of law that generally is amenable to summary judgment. *R.L. Persons*, 18-1 BCA ¶ 37,007 at 180,236 (citing *Varilease Tech. Group, Inc. v. United States*, 289 F.3d 795, 798 (Fed. Cir. 2002); *NVT Tech.*, 370 F.3d at 1159).

1. There is no Genuine Issue of Material Fact but that the Contract is Ambiguous

There is no genuine issue of material fact but that the Contract is ambiguous as to whether Ahuska had to provide a membrane manufacturer's warranty that covered a 120 mph wind speed. On the one hand, SOW § 2.4.1.14.33 (Warranty), expressly required that Ahuska "shall provide revision or amendment to standard membrane manufacturer warranty as required to comply with the specified requirements" (SOF ¶ 2), and the specified requirements included a requirement in SOW § 2.4.1.14.5 that "[t]he new roof shall have a wind uplift resistance for 120 mph wind speed" (*id.* (emphasis added)). One possible reading of these clauses is that they required Ahuska to provide revisions to the standard membrane manufacturer warranty as required to comply with the specified requirement that the new roof have a wind uplift resistance for a 120 mph wind speed. On the other hand, SOW § 2.4.1.14.35 expressly stated that Ahuska had to provide a membrane manufacturer's warranty that must state that it will provide coverage "[i]f within the warranty period the roof system, as installed for its intended use in the normal climatic and environmental conditions of the facility, becomes" damaged due to defective materials or installation workmanship. (SOF ¶ 2 (emphasis added)). The government does not contend that normal climatic and environmental conditions include 120 mph winds (gov't mot. at 3), and this clause addresses the membrane warranty more specifically than any other provision in the contract. Accordingly, a reasonable contractor could read SOW § 2.4.1.14.35 as only requiring Ahuska to provide a membrane manufacturer's warranty that covered wind speeds of less than 120 mph.

In support of its argument that the Contract unambiguously required Ahuska to provide a membrane manufacturer's warranty that covered a 120 mph wind speed, the government first argues that "[i]f the contract merely required the industry standard warranty covering normal climatic and environmental conditions, there is no plausible reason that appellant would be required to 'revis[e] or amend[]' the standard industry warranty. The contract would be facially contradictory" (mot. 6 (modifications in original)). However, the Contract does not specify that the part of the industry standard warranty needing revision or amendment is the portion that states "normal climatic and environmental conditions." Indeed, we have no idea from the contract what the industry standard warranty was and what part of it needed changing—it may have had nothing to do with the "normal climatic and environmental conditions" clause, though it might. Moreover, by directing that the membrane manufacturer's warranty use very specific words, including the "normal climatic and environmental conditions" verbiage, the Contract could be read to indicate that this language would satisfy the revised warranty requirements. Thus, it seems at least as plausible to us that when SOW § 2.4.1.14.33 speaks of revising the standard membrane manufacturer's warranty that it meant to revise it, if necessary, to involve any number of things contained in the specified language, such as the allocation of costs just as easily as something involving the

climactic and environmental conditions. Even if normal climatic and environmental conditions were synonymous with the industry standard warranty—such that SOW § 2.4.1.14.33 required Ahuska to provide an amended standard warranty covering abnormal climatic and environmental conditions such as 120 mph windspeeds—SOW § 2.4.1.14.33 would be inconsistent with SOW § 2.4.1.14.35 because SOW § 2.4.1.14.35 only required a warranty that covered normal climatic and environmental conditions—which only includes wind speeds of less than 120 mph (SOF ¶ 2).

The government next argues that SOW § 2.4.1.14.33 and SOW § 2.4.1.14.35 can be read as consistent because SOW § 2.4.1.14.35 only addressed a warranty for defective materials or improper installation, while SOW § 2.4.1.14.33 was not limited to a defective materials or improper installation warranty (gov’t mot. at 6-8; gov’t reply at 2-3). The government is correct that SOW § 2.4.1.14.35 was limited to damage “due to defective materials or installation workmanship” (SOF ¶ 2). However, the government is incorrect in its argument that SOW § 2.4.1.14.33 was not limited to a defective materials or improper installation workmanship warranty. SOW § 2.4.1.14.33 stated that Ahuska “shall provide roof system material and workmanship warranties meeting specified requirements in accordance with CDRL A010. The contractor shall provide revision or amendment to standard membrane manufacturer warranty as required to comply with the specified requirements” (SOF ¶ 2 (emphasis added)). As a result, the “materials and installation workmanship” qualification is not a basis for distinguishing SOW § 2.4.1.14.35 from SOW § 2.4.1.14.33.

The government finally argues that finding an ambiguity would violate our obligation to read the Contract as a whole, giving meaning to all of its parts, and without leaving a portion of the contract useless, inexplicable, void, or superfluous (gov’t mot. at 7-8). However, we are only obligated to read the contract as a whole, giving meaning to all of its parts, and without leaving a portion of the contract useless, inexplicable, void, or superfluous to the extent possible. *JAAAT Technical Serv.*, 19-1 BCA ¶ 37,297 at 181,429. As discussed in greater detail above, it is not possible to give meaning to both SOW § 2.4.1.14.35’s requirement that the warranty only cover normal climatic environmental conditions—which only covers wind speeds of less than 120 mph (SOF ¶ 2; gov’t mot. at 3)—and to read SOW § 2.4.1.14.33 as requiring a membrane manufacturer’s warranty that includes resistance to a 120 mph wind speed (SOF ¶ 2).⁶

⁶ The government does not rely upon the “including roof membrane manufacturer’s . . . warranty” clause in SOW 2.4.1.14.5 to argue that SOW 2.4.1.14.5 required a membrane manufacturer’s warranty that covered 120 mph wind speeds (gov’t mot.). Nor could it because SOW 2.4.1.14.5 is ambiguous as to what phrase that clause modifies (SOF ¶ 2).

2. There is no Genuine Issue of Material Fact Suggesting that Extrinsic Evidence, the Order of Precedence Clause, or General Rules of Interpretation Resolve that Ambiguity

There is no genuine issue of material fact suggesting that extrinsic evidence, the order of precedence clause, or general rules of interpretation resolve the ambiguity as to whether Ahuska had to provide a membrane manufacturer's warranty that covered a 120 mph wind speed. Neither party points to any extrinsic evidence that purportedly resolves the ambiguity (app. mot. at 2; gov't mot. at 9-12). Moreover, as the government concedes, the Contract's order of precedence clause does not resolve the inconsistencies between SOW § 2.4.1.14.33 and SOW § 2.4.1.14.35 because both of those provisions are in the SOW (SOF ¶¶ 2-3; gov't mot. at 9). Nor does Ahuska point to any general rules of interpretation (app. mot. at 2).

The government points to the general rule of interpretation that, if a contract contains conflicting terms, those which relate to a particular matter control over the more general language (gov't mot. at 10-12); *see also Abraham*, 326 F.3d at 1254; *Gen. Dynamics-Nat'l Steel and Shipbuilding*, 22-1 BCA ¶ 38,067 at 184,826. However, it is unclear which way that general rule of interpretation cuts here. On the one hand, the government contends, the "wind uplift resistance of 120 mph wind speed" language that SOW § 2.4.1.14.33 incorporated through its reference to "the specific requirements" is more particular to wind speed than the general "normal climatic and environmental conditions" language in SOW § 2.4.1.14.35 (SOF ¶ 2). But as we observed above, it is not clear that SOW § 2.4.1.14.33 should be read in this manner. In addition, as we observed above, SOW § 2.4.1.14.35 can be read as the provision that most clearly addresses the membrane manufacturer's warranty. Thus, there is no genuine issue of material fact suggesting that extrinsic evidence, the order of precedence clause, or general rule of interpretation resolve the ambiguity.

3. There is No Genuine Issue of Material Fact but that the Ambiguity was Latent—Not Patent

There is no genuine issue of material fact but that the ambiguity as to whether Ahuska had to provide a membrane manufacturer's warranty that covered a 120 mph wind speed was latent—not patent—because it was not so apparent that it imposed an obligation to inquire upon Ahuska. SOW § 2.4.1.14.35's requirement that Ahuska provide coverage for damage under normal climatic and environmental conditions is not obviously, grossly, or glaringly inconsistent with SOW § 2.4.1.14.33's requirement that Ahuska provide coverage as required to comply with the specified requirements because of the general nature of SOW § 2.4.1.14.33 and SOW 2.4.14.35 discussed above.

The Contract did not contain one provision obviously requiring one thing—in this case, Ahuska to provide a membrane manufacturer’s warranty that covered a wind speed of X mph—and another provision obviously requiring its opposite—in this case, Ahuska to provide a membrane manufacturer’s warranty that covered a wind speed of Y mph. SOW 2.4.1.14.33 did not expressly require that Ahuska provide a membrane manufacturer’s warranty that covered a particular wind speed; it only required that Ahuska provide a membrane manufacturer’s warranty that complied with the specified requirements (SOF ¶ 2). It only became obvious and clear that there was a problem after award, when Ahuska submitted the Firestone warranty (SOF ¶ 4). SOW 2.4.1.14.35 did not expressly require that Ahuska provide a membrane manufacturer’s warranty that covered a particular wind speed either; it only required that Ahuska provide a membrane manufacturer’s warranty that covered “the normal climatic and environmental conditions” (SOF ¶ 2). The Contract did not define the term “the normal climatic and environmental conditions,” let alone indicate that it included a particular wind-speed (SOF ¶ 2). Indeed, the only evidence in the record for purposes of deciding these motions for summary judgment is that Ahuska did not learn that the original membrane manufacturer’s standard warranty only covered 90 mph wind speeds until after award (SOF ¶ 4).⁷ Thus, it cannot be said that the ambiguity between SOW § 2.4.1.14.33 and SOW 2.4.14.35 regarding wind speed coverage was so obvious, gross, or glaring as to relieve the government of the consequences of its own poorly drafted contract. As a result, the ambiguity was latent—not patent—and is accorded an interpretation favorable to Ahuska under the *contra proferentem* doctrine. See *R.L. Persons*, 18-1 BCA ¶ 37,007 at 180,236.

CONCLUSION

For the foregoing reasons, we grant the government’s motion for sanctions and strike the following citations and contentions from Ahuska’s motion for partial summary judgment:

- a. “Contract interpretation is a question of law suitable for summary judgment where the contract language is unambiguous. *Lockheed Martin Corp.*, ASBCA No. 57525, 13-1 BCA ¶ 35,241.” (App. mot. at 2).

⁷ We are not holding that the normal climatic and environmental conditions included a wind speed of 90 mph. Rather, we only hold that, for purposes of deciding these summary judgment motions, the only evidence in the record is that the standard warranty offered by the original membrane manufacturer covered 90 mph wind speeds (SOF ¶ 4). Moreover, we note that, for purposes of deciding these motions, the government has conceded that the normal climatic and environmental conditions did not include 120 mph wind speeds (gov’t mot. at 3).

- b. “ASBCA precedent has repeatedly held that warranties may not be expanded beyond their express terms or implied from performance specifications. See Metric Constructors, Inc., ASBCA No. 50843, 99 1 BCA ¶ 30,134; Blinderman Constr. Co., ASBCA No. 55770, 09 2 BCA ¶ 34,257; Jones Constr. Co., ASBCA No. 38679, 90-3 BCA ¶ 23,241.” (*Id.* (citation formatting errors in original)).

We also grant Ahuska’s motion for partial summary judgment, and deny the government’s cross-motion for partial summary judgment.

Dated: July 13, 2026



JAMES R. SWEET
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



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

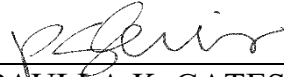
I concur



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. 64164, Appeal of PDO Ahuska Joint Venture LLC, rendered in conformance with the Board's Charter.

Dated: July 13, 2026



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