ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -	)	
	)	
VESEQU LLC	)	ASBCA No. 64468
	)	
Under Contract No. SP8000-25-C-0005	)	

APPEARANCE FOR THE APPELLANT: Mr. Jason Shadburn
Principal Program Director

APPEARANCES FOR THE GOVERNMENT: Steven M. Sosko, Esq.
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OPINION BY ADMINISTRATIVE JUDGE SWEET

This appeal involves a contract between the Defense Logistics Agency Strategic Materials (DLA or government) and *pro se* appellant VESEQU LLC (VESEQU) for VESEQU to acquire and make available to DLA 30 web-based subscriptions, publications, and periodicals. DLA partially terminated the contract for convenience, and the parties were unable to resolve the amount due to VESEQU as a result of that termination. Therefore, VESEQU appealed the contracting officer's final decision (COFD) determining the settlement amount. VESEQU has elected to proceed under the Board's Accelerated Procedure, *see* Board Rule 12.3, and the parties have elected to proceed under Board Rule 11. As discussed in greater detail below, VESEQU has failed to meet its burden of proving that it is entitled to a greater termination settlement amount than the amended termination settlement amount offered by the contracting officer (CO) because VESEQU has failed to demonstrate using its standard record keeping system an amount of loss greater than the amended settlement amount with sufficient certainty so that that determination will be more than mere speculation. Therefore, the appeal is denied.

FINDINGS OF FACT

1. On April 3, 2025, DLA issued Solicitation No. SP8000-25-Q-0005 (Solicitation) as a request for quote to obtain a variety of commercially available,

web-based subscriptions, publications, and periodicals (R4, tab 1 at 1, 3).[1] Attachment B listed 30 required subscription services, including: (1) Bloomberg Professional Service B-Unit Device Online (Bloomberg); (2) S&P Platts (Nonferrous Market Data and Market Insight)'s Online & Email-Basic Service + 1 Enhanced Add-On (S&P); (3) Benchmark Minerals Intelligence's Industrial Minerals (Benchmark); and (4) Project Blue Additional Reports (Up to 10) Digital (Project Blue; collectively Cancelled Subscriptions) (R4, tab 1B).

2. Amendment No. 0001 to the Solicitation answered questions from prospective offerors, and amended the solicitation (R4, tab 2 at 2). In particular, in question 24, one prospective offeror asked which specific subscription DLA wanted from Benchmark because there was no subscription entitled Industrial Minerals (*id.* at 5). DLA responded that it was interested in Rare Earth Forecast Reports from Benchmark (*id.*). In question 40, a prospective offeror asked if there were any known pain points or challenges encountered under past contracts with prior vendors that offerors should consider addressing (*id.* at 8). Amendment No. 0001 responded that it "will not sign a Master Subscription Agreement" (*id.*). Amendment No. 0003 reiterated in highlighting that "[t]he government will not sign Master Service Agreements directly with the subcontractors in order to obtain access to the requested items in Attachment B" (R4, tab 5 at 9).

3. VESEQU's proposal stated that VESEQU would perform five other government contracts for at least part of the period between June 17, 2025 and October 27, 2025 (R4, tab 6 at 4-5).

4. Based upon the Solicitation, DLA awarded VESEQU Contract No. SP8000-25-C-005 (Contract) on June 17, 2025 (R4, tab 8 at 1-2, tab 8A). The Contract included a termination for the government's convenience clause pursuant to Federal Acquisition Regulation (FAR) 52.212-4(*l*), which stated that:

> The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system,

[1] All references to "R4" are to the government's supplemental Rule 4 file.

> have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(R4, tab 8 at 20)

5. After award, S&P and Bloomberg insisted that the government sign a master service agreement (MSA). From June 2025 to September 2025, VESEQU unsuccessfully attempted to negotiate mutually agreeable license terms between DLA on the one hand, and S&P and Bloomberg on the other hand. (R4, tabs 10-12, 14, 17A, 21-22, 26)

6. During that period, a dispute also arose between VESEQU and DLA regarding what Benchmark subscription the Contract required, with VESEQU indicating that it would cost extra to provide the Benchmark Rare Earths Forecast Reports (R4, tabs 13, 18, 21, 25).

7. Also during the September 2025 to October 2025 period, a dispute arose between VESEQU and DLA regarding whether VESEQU had to provide the Project Blue subscription on a per subscription or per material basis (R4, tabs 23, 27; gov't br., stmt. of fact ¶ 48).

8. On October 27, 2025, the CO issued a Stop Work Order (SWO) pursuant to FAR 52.242-15, which directed VESEQU to stop work on the Cancelled Subscriptions (R4, tab 29 at 1).

9. Two days later, on October 29, 2025, VESEQU submitted a document entitled Five-Day Written Status and Cost Summary (Cost Summary), which acknowledged receipt of the SWO and confirmed that "[u]pon receipt of the Stop Work Order, VESEQU halted all related setup activity and instructed vendors to suspend all billable actions. Costs tied to the suspended subscriptions have been contained and no further charges are being incurred." (R4, tab 31 at 5-6) There is no evidence that the Cost Summary was part of a regular, organized method for tracking relevant costs (*id.*). Nor did the Cost Summary provide any contemporaneous records tracking and allocating its costs (*id.*). Instead, the Cost Summary contained a *post hoc* estimate that, up to the SWO on October 27, 2025, VESEQU spent 760 hours on the Canceled Subscriptions—consisting of 200 hours each on the Bloomberg, the S&P, and the Benchmark subscriptions, and 160 hours on the Project Blue subscription (*id.* at 6).

10. On November 4, 2025, VESEQU submitted a Request for Equitable Adjustment (REA) (R4, tab 31 at 1-5). There is no evidence that the REA was part of a regular, organized method for tracking relevant costs (*id*.). Nor did the REA provide any contemporaneous records tracking and allocating VESEQU's costs (*id*.). In particular, the REA stated that "[a]ll hours were recorded through VESEQU's internal time-tracking system and are directly attributable to the contract line items placed under stop work" (*id*. at 3). VESEQU did not provide evidence from that internal time-tracking system (*id*.). Instead, the REA reiterated the Cost Summary's assertion that VESEQU spent 760 hours on the Canceled Subscriptions, applied an $85 hourly rate, and added $6,330.80 in indirect (G&A) costs, for a "Total Estimated Cost to Date" of $70,930.80 (*id*. at 3).

11. On November 12, 2025, the CO requested additional evidence to substantiate how VESEQU calculated its expenses, and information on how VESEQU calculated its $85 per hour labor rate (R4, tab 34 at 2-3).

12. Later that day, VESEQU responded with a document entitled Substantiating Documentation (Substantiating Documentation) (R4, tabs 34-34A). There is no evidence that the Substantiating Documentation was part of a regular, organized method for tracking relevant costs (*id*.). Nor did the Substantiating Documentation provide any contemporaneous records tracking and allocating VESEQU's costs (*id*.). Instead, the Substantiating Documentation estimated that VESEQU spent 760 hours on the Canceled Subscriptions—200 hours each on the Bloomberg, the S&P, and the Benchmark subscriptions, and 160 hours on the Project Blue subscription—between June 17, 2025 and October 27, 2025, and provided a narrative of the work VESEQU purportedly performed (R4, tab 34A at 4-10, 12). The Substantiating Documentation also stated that the 760 hours excluded "post-suspension or administrative follow-up activities" and "costs related to proposal preparation, litigation, or claim development" (*id*. at 13). Finally, the Substantiating Documentation explained how VESEQU calculated its labor rate, including that it was a "fully burdened amount encompassing . . . [o]verhead and general and administrative (G&A) costs related to personnel, systems, and compliance management" (*id*. at 11).

13. On November 17, 2025, DLA partially terminated the contract for convenience pursuant to FAR 52.212-4(*l*), terminating the Canceled Subscriptions (R4, tabs 35-35B).

14. On December 18, 2025, VESEQU converted its REA into a Claim (R4, tab 36 at 1-2).

15. On February 20, 2026, the CO issued a COFD (R4, tab 41A at 1). The COFD granted VESEQU $2,550 for 30 hours of work on the Benchmark subscription at an hourly rate of $85 (*id*. at 4). In support of that conclusion, the COFD noted that

the government resolved the Benchmark issue in 10 hours (*id.*). The COFD did not award any G&A expenses because the Substantiating Documentation stated that the $85 per hour rate was fully burdened and encompassed G&A (*id.* at 5). Moreover, the COFD did not award any costs for the Bloomberg, the S&P, or the Project Blue subscriptions because VESEQU allegedly failed to provide sufficient evidence demonstrating that it incurred the claimed costs, or that those costs were properly attributable to the Contract and its partial termination (*id.*).

16. That same day, VESEQU appealed the denial of its Claim.[2]

17. During discovery, DLA propounded Interrogatories and Requests for the Production of Documents upon VESEQU. Interrogatory No. 1 asked VESEQU to identify every person—including their names, positions, salaries, dates worked, daily hours worked, and type of work—who worked on the Contract from award to the partial termination; to provide a description of the work performed; and to provide the relied-upon documents (R4, tab 44 at 24).

18. VESEQU's response to Interrogatory No. 1, which it called a 760-Hour Crosswalk Table (Crosswalk),[3] was a narrative supporting VESEQU's *post hoc* estimates (R4, tab 44 at 26-27). There is no evidence that the Crosswalk was part of a regular, organized method for tracking relevant costs (*id.*). The Crosswalk's response to the name, position, and salary of each person who worked on the Contract portion of Interrogatory No. 1 stated that only its Principal Program Director, Jason Shadbum, worked on the Contract, and his salary—including taxes—was $85 per hour (*id.* at 25). The Crosswalk's response to the dates worked and daily hours portion of Interrogatory No. 1 stated that:

> Mr. Shadbum worked on the contract from June 18, 2025
> (the first business day following the June 17, 2025 award

[2] In its complaint, VESEQU added $23,052.51 to the Claim's $70,930.80, for a total of $93,983.31 (compl. ¶ 35(A)). However, in its Rule 11 Brief, VESEQU stated that the $23,052.51 "is a separate amount VESEQU reserves and does not press as part of the certified claim." (App. br. at 1) Similarly, VESEQU stated in its Rule 11 Brief that the additional $23,052.51 "form[s] no part of the $70,930.80 certified amount now before the Board" (*id.* at 7). Therefore, we do not address the $23,052.51 added by the complaint.

[3] VESEQU repeatedly referred to "The 760-Hour Crosswalk Table produced with VESEQU's Interrogatory 1 answer" (R4, tab 44 at 7, 9, 11, 13, 15). There is no evidence in the record that VESEQU produced a document separate from its Interrogatory No. 1 Response entitled 760-Hour Crosswalk Table (R4, tab 44). Therefore, we conclude that the 760-Hour Crosswalk Table refers to VESEQU's Interrogatory No. 1 Response.

date) through November 17, 2025 (effective date of Modification No. P00004), partial termination for convenience). Total direct labor hours: 760 hours over the 153-calendar-day performance period. Work was performed on a variable daily schedule consistent with the demands of an active subscription procurement and management contract involving 28+ commercial publishers, multiple Government stakeholders, ongoing license negotiations, and regulatory compliance activities. The 760-hour total is allocated across five activity phases as described in the Crosswalk submitted concurrently with this response:

Phase 1—Contract Initiation & Onboarding (June 18-July 8): 78 hours

Phase 2—Subscription Activation & Publisher Coordination (July 1-July 31): 186 hours

Phase 3—MSA Impasse Resolution & Licensing Negotiation (Aug 1-Sep 30): 275 hours

Phase 4—Final Resolution Efforts & Stop-Work Compliance (Oct 1-Oct 29): 145 hours

Phase 5—REA Preparation & T4C Processing (Oct 29-Nov 17): 76 hours

Mr. Shadbum devoted substantially all of his professional working time to performance of hours by primary cost-driver subscription: Bloomberg Professional Service (200 hours), S&P Global Platts Metal Daily (200 hours), Benchmark Minerals Intelligence (200 hours), and Project Blue Reports (160 hours). The allocation reflects the subscriptions that generated the heaviest program management burden during the performance period. The underlying activities in Phase 1 and 2—including publisher outreach to all 28+ CLIN subscription providers, contract-wide activation coordination, WAWF setup, COR user-list management, weekly dashboard production, and Cure Notice response preparation—were performed across the full scope of the contract and are not attributable to any single subscription.

(*Id*. at 25-26 (emphasis omitted)) The Crosswalk's response to the description of work performed portion of Interrogatory No. 1 provided a narrative of the work that Mr. Shadbum allegedly performed (*id*. at 26-27). In particular, in addressing the MSA Impasse Resolution and Licensing Negotiation (Phase 3), the Crosswalk included in its narrative, "Fastmarkets—user expansion pricing negotiation; invoice reconciliation" (*id*. at 27). Similarly, in addressing the Final Resolution and Stop-Work Compliance (Phase 4), the Crosswalk included, "Fastmarkets refund coordination; Darton Commodities delivery confirmation" (*id*. at 27). Fastmarkets was the publisher of five of the non-Canceled Subscriptions, and Darton Commodities, Ltd. was the publisher of one of the non-Canceled Subscriptions (R4, tab 1B). In addressing REA Preparation and Termination for Convenience Processing (Phase 5), the Crosswalk included in its narrative "Substantiating Documentation preparation and submission" (R4, tab 44 at 27). The Crosswalk's response to the documents relied upon portion of Interrogatory No. 1 did not provide or identify any contemporaneous records tracking and allocating its costs (*id*. at 27).

19. DLA's Requests for the Production of Documents asked VESEQU to produce documents substantiating its alleged costs during discovery. VESEQU responded by pointing to: (1) "The Bucket C Time Ledger (Rule 4(b) Supplement, Tab A-11)," which purportedly "contains contemporaneous time entries for all post-certification claim preparation work, including Bloomberg-specific coordination;" (2) the Substantiating Documentation; (3) the Crosswalk; and (4) various emails. (R4, tab 44 at 6-13) VESEQU never submitted to the Board a supplemental R4 file, tab A- 11, or a Bucket C Time Ledger, despite VESEQU's representation that the "Bucket C time ledger . . . will be produced in accordance with the Board's schedule . . . ." (June 12, 2026 email from VESEQU to DLA at 2 (docket #78)), and the government indicating in its Rule 11 briefing that VESEQU had failed to provide that document (gov't br. at 17).

20. Attached to its discovery requests, VESEQU also produced a document entitled Cost-To-Price Relationship Summary (R4, tab 44 at 65). In that Cost-To-Price Relationship Summary, under § IV (Termination Cost Claim-Component Breakdown), VESEQU included a table (Breakdown) where row A was illegible due to overwriting, except an indication of "$85/hr per int" (*id*. at 66).

21. In connection with the government's Rule 11 brief, the CO submitted a declaration, which attached a June 17, 2026 memorandum of record (Memorandum of Record). The Memorandum of Record analyzed and estimated VESEQU's labor effort for the S&P, the Bloomberg, and the Project Blue subscriptions based upon the emails that VESEQU produced or referenced in discovery (R4, tab 46). We derive the following table from the Memorandum of Record's findings:

TABLE 1: Memorandum of Record Findings Summary

Subscription	# of Emails (Discovery Responses)	Hours Per Email	Amount	MSA Review Hours	Total
Bloomberg	65	.25	13.75	2	15.75
S&P	76	.25	19	3	22
Project Blue	About 8	.25	2		2
Total					**39.75**

(*Id*. at 5-7) We read the declaration and Memorandum of Record as an amendment to the settlement determination in the COFD. As a result, the total number of hours VESEQU worked on the Canceled Subscriptions, according to the CO, was 69.75 (30 hours on the Benchmark subscription from the COFD (R4, tab 41A at 4) plus 39.75 hours on the Bloomberg, the S&P, and the Project Blue subscriptions from the Memorandum of Record (R4, tab 46 at 5-7)). Using the $85 hourly rate from the COFD, that means that the CO's amended settlement determination was $5,928.75.

22. VESEQU attached as Exhibit B-1 to its Rule 11 Brief, a document entitled Performance-Period Vendor Engagement Timeline (Timeline) (app. br., ex. B-1). There is no evidence that the Timeline was part of a regular, organized method for tracking relevant costs (*id*.). Nor did the Timeline provide any contemporaneous records tracking and allocating its costs (*id*.). Instead, the Timeline again reiterated the *post hoc* estimate that VESEQU spent 760 hours on the Canceled Subscriptions—200 hours each on the Bloomberg, the S&P, and the Benchmark subscriptions, and 160 hours on the Project Blue subscription —between June 17, 2025 and October 27, 2025, and provided a narrative in support of that estimate (*id*.).

DECISION

VESEQU has failed to demonstrate using its standard record keeping system an amount of loss greater than the amended settlement amount with sufficient certainty so that that determination will be more than mere speculation. The overall purpose of a termination for convenience settlement is to fairly compensate the contractor, and to make it whole for the costs it incurred in connection with the terminated work. *SWR, Inc.*, ASBCA No. 56708, 15-1 BCA ¶ 35,832 at 175,223. The contractor is not supposed to suffer as a result of a termination for convenience of the government, nor to underwrite the government's decision to terminate. *Id*. Under FAR 52.212-4(*l*)—which was included in the Contract (finding 4)—when the government terminates a contract for commercial products or services for its convenience, the contractor shall be paid:

> [A] percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination.

48 C.F.R. § 52.212-4(*l*).

We segregate FAR 52.212-4(*l*) into two prongs allowing for the recovery of monetary amounts: (1) a percentage of the contract price reflecting the percentage of work performed (First Prong); and (2) the reasonable charges that have resulted from the contract termination (Second Prong). *Dellew Corp.*, ASBCA No. 58538, 15-1 BCA ¶ 35,975 at 175,783. Under the First Prong, a contractor is entitled to the "price of work performed under the contract prior to notice of termination . . . ." *Id.* There can be no recovery under the First Prong if the government terminates the contract for convenience before work was performed under the contract. *Al Muamroon Trading*, ASBCA No. 63648, 25-1 BCA ¶ 38,857 at 189,070.

Under the Second Prong, a contractor is entitled to "settlement expenses . . . [and] costs resulting from the termination." *Dellew Corp.*, 15-1 BCA ¶ 35,975 at 175,783. The costs resulting from the termination include "reasonable expenses incurred [prior to the termination for convenience] in preparation for the terminated portion of the contract." *Id.* The phrase "its standard record keeping system" under the Second Prong means "a regular, organized method for tracking relevant costs . . . ." *ACLR, LLC v. United States*, 23-1190, 2024 WL 4315111, at *7 (Fed. Cir. Sept. 27, 2024). The use of the term:

> does not impose any broad prescription as to precisely how every government contractor must maintain its books and records. But this does not mean . . . that [a contractor can] fail to contemporaneously track and allocate its costs and then, only for purposes of litigation, dump essentially every record it can find on the court, and expect the court to sift through it and find it to be a "standard record keeping system."

Id. Nor may a contractor rely solely upon "*post hoc* estimates." *Id.*

It is a contractor's burden to prove by a preponderance of the evidence that it is entitled to a greater termination settlement amount than that determined by the CO. *SWR*, 15-1 BCA ¶ 35,832 at 175,225. A contractor must prove "the amount of loss with sufficient certainty so that that determination of the amount of . . . damages will be more than mere speculation." *Id*. (quoting *Lisbon Contractors, Inc. v. United States*, 828 F.2d 759, 767 (Fed. Cir. 1987)); *see also Globe Trailer Mfg., Inc.*, ASBCA No. 60979, 26-1 BCA ¶ 38,972 at 189,744 (holding that spreadsheets with vague entries regarding labor costs that purportedly resulted from a termination for convenience were insufficient to meet a contractor's burden of proof).

Here, VESEQU relies upon the Cost Summary, the Substantiating Documentation, the Timeline (collectively, Narratives), and unspecified emails. (App. br. at 3-4, ex. B-1; app. reply at 4). As discussed in greater detail below, those documents fail to demonstrate using VESEQU's standard record keeping system an amount of loss greater than the amended settlement amount with sufficient certainty so that that determination will be more than mere speculation.[4]

I. <u>The Narratives Fail To Demonstrate Using VESEQU's Standard Record Keeping System an Amount of Loss Greater Than the Amended Settlement Amount With Sufficient Certainty so That That Determination Will Be More Than Mere Speculation</u>

The Narratives fail to demonstrate using VESEQU's standard record keeping system an amount of loss greater than the amended settlement amount with sufficient certainty so that that determination will be more than mere speculation. The Narratives were not part of VESEQU's standard record keeping system because they were not part of a regular, organized method for tracking relevant costs. (Findings 9, 12, 22); *ACLR*, 2024 WL 4315111, at *7. In particular, the Narratives did not contemporaneously track and allocate VESEQU's costs (*id*.). Rather, the Narratives were *post hoc* estimates and narratives (*id*.).[5]

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[4] VESEQU does not expressly identify under which prong it is claiming that DLA's settlement determination is inadequate. However, it clearly is not relying upon the First Prong because it makes no arguments regarding the percentage of the work performed. Rather, because it relies upon costs allegedly incurred in preparation for the terminated portion of the Contract, it is clear that it is relying upon the Second Prong. (App. br. at 4-6)

[5] The Crosswalk—upon which VESEQU relied in its discovery responses—also was not part of VESEQU's standard record keeping system because it was a *post hoc* estimate and narrative instead of a document that contemporaneously tracked and allocated VESEQU's costs as part of a regular, organized method for tracking relevant costs (finding 18). Further, we cannot determine whether the Bucket C Time Ledger—upon which VESEQU also relied in its discovery responses—contemporaneously tracked and allocated VESEQU's costs as part of a regular, organized method for tracking relevant costs because VESEQU never submitted to the Board a supplemental R4 file, tab A-11, or a Bucket C Time Ledger (finding 19). That is despite VESEQU's representation that the

Moreover, those *post hoc* estimates and narratives are not credible for three reasons. First, the Narratives are not credible because they indicated that VESEQU spent 760 hours preparing for the Canceled Subscriptions between award on June 17, 2025 and the SWO on October 27, 2025, (findings 9, 12, 22), which would mean that Mr. Shadbum—whom VESEQU asserts was the only person who worked on the Contract (finding 18)—worked <u>more than</u> full-time just on the Canceled Subscriptions for over four months.[6] That is particularly unbelievable in light of the dozens of non-Canceled Subscriptions on which VESEQU had to work under the Contract during that period—to say nothing of the five other government contracts VESEQU also was working on during that period. (Finding 3)

Second, the Narratives are not credible because they are inconsistent with the Crosswalk—upon which VESEQU relied in its discovery responses—regarding when VESEQU worked the claimed 760 hours on the Canceled Subscriptions, and what tasks those 760 hours included. While the Narratives asserted that VESEQU worked the claimed 760 hours between June 17, 2025 and October 27, 2025 (findings 9, 12, 22), the Crosswalk asserted that VESEQU worked those same claimed 760 hours between June 18, 2025 and November 17, 2025. (Finding 18) Those numbers are inconsistent because the Crosswalk asserted that VESEQU worked 76 of those claimed 760 hours after it received the SWO on October 29, 2025, while the Substantiating Documentation indicated that VESEQU worked all of the claimed 760 hours prior to October 27, 2025 (findings 12, 18). As a result, while the Crosswalk included proposal preparation and termination processing in the claimed 760 hours, the Substantiating Documentation indicated that it excluded "post-suspension or administrative follow-up activities" and "costs related to proposal preparation, litigation, or claim development" from those same claimed 760 hours (findings 12, 18). Indeed, the Crosswalk's assertion that VESEQU worked 76 hours of the claimed 760 hours on proposal preparation and termination processing after October 29, 2025 is impossible to square with the fact that VESEQU already was

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"Bucket C time ledger . . . will be produced in accordance with the Board's schedule, subject to VESEQU's positions in the appeal," and the government indicating in its Rule 11 briefing that VESEQU had failed to provide that document. (*Id.*) In any event the Bucket C Time Ledger only purportedly tracked post-certification claim preparation work (*id.*).

[6] We take judicial notice of the fact that there were 90 business days (*i.e.*, calendar days, excluding weekends and Federal Holidays) between June 17, 2025 and October 27 2025. *See* www.timeanddate.com/date/workdays.html. Dividing the claimed 760 hours preparing for the Canceled Subscriptions between June 17, 2025 and October 27, 2025, by those 90 business days produces an average of 8.44 hours of work per business day on the Canceled Subscriptions, which exceeds the full-time schedule of 8 hours of work per business day.

claiming in the Cost Summary on October 29, 2025 that it had worked 760 hours on the Canceled Subscriptions (findings 9, 18). Thus, the numbers simply do not add up.

Third, the Narratives are not credible because they are inconsistent with the Crosswalk regarding the subscriptions to which VESEQU allocated the claimed 760 hours. The Narratives allocated the claimed 760 hours of work on the Canceled Subscriptions as follows: 200 hours to the Bloomberg subscription; 200 hours to the S&P subscription; 200 hours to the Benchmark subscription; and 160 hours to the Project Blue subscription. (Findings 9, 12, 22) However, in the Crosswalk, VESEQU allocated 264 hours of the claimed 760 hours to Contract Initiation and Onboarding (Phase 1) and Subscription Activation and Publisher Coordination (Phase 2), both of which the Crosswalk stated "were performed across the full scope of the contract and are not attributable to any single subscription" (finding 18). Even as to MSA Impasse Resolution & Licensing Negotiation (Phase 3) and Final Resolution and Stop-Work Compliance (Phase 4), the Crosswalk included time during those phases for user expansion pricing negotiation, invoice reconciliation, refund coordination, and delivery confirmation for non-Canceled Subscriptions. (*Id.*) Because the Narratives indicated that all of the claimed 760 hours was for work on the Canceled Subscriptions (findings 9, 12, 22), while the Crosswalk indicated that a substantial portion of the claimed 760 hours was for work not attributable to any single subscription or for work on the non-Canceled Subscriptions (finding 18), the Narratives are inconsistent with the Crosswalk. That is particularly problematic because the costs of work that are not allocable to the Canceled Subscriptions is not recoverable. *See Hugo Auchter GmbH*, ASBCA No. 39642, 91-1 BCA ¶ 23,645 at 118,442.

In sum, due to the lack of contemporaneous evidence tracking and allocating VESEQU's costs as part of a regular, organized method for tracking related costs, and the lack of credibility in their *post hoc* estimates and narratives, the Narratives fail to demonstrate using VESEQU's standard record keeping system an amount of loss greater than the amended settlement amount with sufficient certainty so that that determination will be more than mere speculation.

II. <u>The Emails Fail To Demonstrate Using VESEQU's Standard Record Keeping System an Amount of Loss Greater Than the Amended Settlement Amount With Sufficient Certainty so That That Determination Will Be More Than Mere Speculation</u>

The emails also fail to demonstrate using VESEQU's standard record keeping system an amount of loss greater than the amended settlement amount with sufficient certainty so that that determination will be more than mere speculation. VESEQU fails to specify the emails upon which it relies. (App. br. at 3-4, ex. B-1; app. reply at 4) Moreover, such dumps of essentially every record a contractor can find on the Board expecting the Board to sift through them do not constitute a standard record keeping system. *See ACLR*, 2024 WL 4315111, at *7. Nor could we determine from the emails the reasonable charges that have resulted from the termination because VESEQU does not even estimate—let alone present contemporaneous evidence—of the amount of time that it spent on those emails (app. br. at 3-4, ex. B-1; app. reply at 4).

In any event, the CO has estimated the reasonable charges for the emails that VESEQU produced or referenced in discovery as part of its amended settlement determination, which we calculate to be $5,928.75 (finding 21). Neither party has shown that that determination was unreasonable. On the one hand, the government argues that we should use an hourly rate of $45.50 per hour instead of $85 per hour because, if highlighted and copied, the illegible portion of the Breakdown purportedly indicates that the hourly rate was $45.50 per hour. (Gov't br. at 19) However, the Board was unable to observe the purported $45.50 indication by highlighting and copying the illegible portion of the Breakdown. Even if we could, the fact that VESEQU overwrote that indication with $85 (finding 20) suggests that any $45.50 per hour rate was not VESEQU's actual hourly rate. Thus, the Board follows the COFD's original determination that the hourly rate was $85 per hour. The government also argues that we should reduce the number of hours spent on the Benchmark subscription from the 30 hours that the COFD determined was reasonable to 10 hours because the COFD stated that the government resolved the Benchmark subscription issues within 10 hours (gov't reply at 9). However, the fact that the government spent 10 hours on the Benchmark subscription does not negate the fact that VESEQU spent 30 hours on that subscription because there is no reason that the parties had to spend the same amount of time on the Benchmark subscription as each other. Certainly, the COFD found that VESEQU spent 30 hours on the Benchmark subscription, despite noting that the government only spent 10 hours on that subscription. (Finding 15) Therefore, the government has failed to show that VESEQU is entitled to less than the amended settlement amount. On the other hand, as discussed above, VESEQU has failed to demonstrate using VESEQU's standard record keeping system an amount of loss greater than the amended settlement amount of $5,928.75 with sufficient certainty so that that determination will be more than mere speculation.

III. <u>VESEQU's Arguments</u>

VESEQU's arguments in support of its claim are meritless. VESEQU argues that, under FAR 52.212-4(*l*), it need not comply with cost accounting standards or contract cost principles, and the government does not have the right to audit its records (app. br. at 3-4). That is true (finding 4) However, under FAR 52.212-4(*l*), VESEQU must demonstrate using its standard record keeping system an amount of loss greater than the amended settlement amount with sufficient certainty so that that determination will be more than mere speculation. (*Id.*); *SWR*, 15-1 BCA ¶ 35,832 at 175,225. As discussed above, VESEQU has failed to meet that burden.

VESEQU also argues that the COFD is entitled to no weight under our *de novo* review, and the government offers no evidence that VESEQU did not work 760 hours on the Canceled Subscriptions (app. br. at 4, 6-7; app. reply at 1, 3-4). However, it is not the government's burden to prove the number of hours that VESEQU did not work. Rather, it is VESEQU's burden to prove using its standard record keeping system an amount of loss greater than the amended settlement amount with sufficient certainty so that that determination will be more than mere speculation. 48 C.F.R. § 52.212-4(*l*); *SWR*, 15-1 BCA ¶ 35,832 at 175,225. Again, as discussed above, VESEQU has failed to meet that burden.

VESEQU finally argues that the Narratives contemporaneously tracked and allocated costs because at least some of the Narratives generated the 760 hour breakdown before the termination or litigation (app. reply at 4). Books and records contemporaneously track and allocate costs when they track and allocate those costs "at the same time" as a contractor incurs those costs. *See* WEBSTER'S THIRD NEW INT'L DICTIONARY (UNABRIDGED) 491 (8th ed. 1986). Here, the Cost Summary—the earliest Narrative—acknowledged that it did not contemporaneously track and allocate costs by expressly stating that VESEQU was not incurring costs at the time of the Cost Summary (finding 9). Indeed, a few days after the Cost Summary, VESEQU admitted in the REA that, instead of contemporaneously tracking and allocating costs, the 760 hour breakdown narrative relied upon an internal time-tracking system, stating that "[a]ll hours were recorded through VESEQU's internal time-tracking system and are directly attributable to the contract line items placed under stop work " (finding 10). Yet, VESEQU has failed to provide evidence from that internal time-tracking system (*id.*). Thus, VESEQU has failed to provide evidence of the contemporaneous tracking and allocation of its costs.

CONCLUSION

VESEQU has failed to demonstrate using its standard record keeping system an amount of loss greater than the amended settlement amount of $5,928.75 with sufficient certainty so that that determination will be more than mere speculation. Therefore, we deny the appeal.

Dated: August 21, 2026

James R. Sweet

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

(Signatures continued)

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. 64468, Appeal of VESEQU LLC, rendered in conformance with the Board's Charter.

Dated: August 21, 2026

for

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