

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
)
Hensel Phelps Construction Company) ASBCA No. 64327
)
Under Contract No. W9126G-18-C-0061)

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OPINION BY ADMINISTRATIVE JUDGE MCLISH ON
THE GOVERNMENT’S PARTIAL MOTION TO DISMISS

The United States Army Corps of Engineers (USACE or government) moves to dismiss the delay portion of an appeal by Hensel Phelps Construction Company (Hensel Phelps). The appeal arises from a construction project where Hensel Phelps seeks \$22,050,672 for delay-related general conditions and other direct costs. We deny the motion.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

1. On or about September 20, 2018, USACE awarded Contract No. W9126G18C0061 (the Contract) to Hensel Phelps to construct the Bureau of Engraving and Printing Western Currency Facility Expansion Project in Fort Worth, Texas (Project) (compl. ¶ 1; R4, tab 26).

2. After completing the Project, Hensel Phelps submitted a certified claim to the contracting officer seeking 285 days of compensable delay costs allegedly incurred by it and its subcontractors (compl. ¶¶ 8-9). The claim consisted of a 47-page narrative (including a Critical Path Method (CPM) schedule analysis), 42 exhibits, and eight “financial damages” appendices, which included six subcontractor pass-through claims (R4, tabs 3-12).

3. The delay portion of the claim (Delay Claim) asserted that while the contracting officer acknowledged 190 days of government-caused delay, she deemed them non-compensable due to concurrent delays, issuing a unilateral Modification No. (Mod. No.) P00033 for time only. The claim further contended these same delays caused uncompensated downstream impacts on successor work, bringing the total compensable delay days sought to 285. (R4, tab 3 at 179-82)

4. As described in the claim, the Contract divided the Project into ten Contract Line Item Numbers (CLINs), each with separate completion dates and pricing. For example, CLIN 0002 was for Production Areas and CLIN 0007 was for the Admin Expansion and Renovation. (R4, tab 3 at 150)

5. The claim attributed project delays to a “seriously deficient and inadequate” government-provided design. The flaws allegedly necessitated over 2,200 requests for information (RFIs), to which USACE responded with 198 requests for proposals (RFPs), plus revisions, adding or changing design elements “that spanned nearly the entire project duration.” (R4, tab 3 at 149, 153)

6. While design changes affected nearly all scopes, the “wholly deficient” site electrical design allegedly caused the largest disruption, impacting multiple CLINs and preventing them from being completed independently. The claim also faulted the mechanical design as deficient and asserted that “the modifications to resolve the deficient electrical and mechanical designs occurred incrementally and resulted in project phasing impacts that delayed to [sic] CLIN work dependent on electrical completions in other CLIN work areas as these systems spanned multiple CLIN areas.” As a result, Hensel Phelps argued, it “could not complete CLINs independently as the electrical design tied completion of the CLINs together.” (R4, tab 3 at 155-56)

7. Hensel Phelps alleged that extensive electrical changes required by RFP 92 drove delays to overall progress and completion of CLIN 002, which in turn delayed CLIN 007 and CLIN 001 (R4, tab 3 at 163). It further claimed that mechanical design changes in RFP 149 and RFP 123 also delayed CLIN 0002, compounding the delay to CLIN 0007 (*id.* at 165, 178-79).

8. Section 4 of the claim (Schedule Analysis) detailed the basis for the Delay Claim, using a critical path “window” analysis (R4, tab 3 at 173-88). This method compares actual progress to the planned schedule within specific periods, or “windows,” to quantify impacts and identify changes to the overall project critical path (*id.* at 173-74). According to the claim, these windows account for “significant changes in the contemporaneous project critical path through the entire program (all CLINs)” (*id.* at 173) (emphasis in original). The schedule analysis purportedly “identifies impacts to the overall critical path of the entire Project” (*id.* at 174).

9. Hensel Phelps' schedule analysis showed the critical path running through CLIN 0002, CLIN 0007 and CLIN 0001 (R4, tab 3 at 174). The claim indicated that the delays that form the basis of the 285-day Delay Claim occurred during CLIN 0002 work in Window 2 (May 16, 2021 to May 15, 2022), along with downstream impacts from those delays on successor work in CLINs 007 and 001 (*id.* at 178-81). During Window 2, the claim indicated, USACE issued a series of design changes to mechanical systems and electrical work, including through RFPs 92, 123, and 149, that collectively impacted critical path work in CLIN 0002 and ultimately delayed the commissioning of CLIN 0002 for 190 days (*id.* at 178-79 (fig. 23), 190 (fig. 31)).

10. The Delay Claim asserted that, based on these impacts, USACE agreed that it was responsible for 190 days of critical delay and that Hensel Phelps was entitled to a time extension of that duration. USACE refused, however, to compensate Hensel Phelps for its extended general conditions for those days and also refused to recognize additional days of delay to downstream work in CLINs 0007 and 0001. As a result, USACE unilaterally issued Mod. No. P00033 granting the 190-day time extension. (R4, tab 3 at 179-82; tab 68 at 714-16) The Delay Claim acknowledged that the government had previously recognized that Hensel Phelps was entitled to hundreds of days of delay, but stated that "significant portions of the remaining schedule impacts remain unresolved" (R4, tab 3 at 149).

11. The claim stated that Hensel Phelps also evaluated potential concurrent delays in Windows 2 and 3 and found none (R4, tab 3 at 180-82).

12. The claim for \$22,050,672 included amounts sought in pass-through claims by six of its subcontractors, which were attached as appendices to the claim (R4, tab 3 at 189 (fig. 30), 191-92 (appendices 3-8)). Three of the six subcontractors seek delay damages. Cobb Mechanical Contractors seeks \$2,161,586 (R4, tab 7 at 687); G&C Equipment Corp. (on behalf of its subcontractor Johnson Controls, Inc.) seeks \$325,695.27 (R4, tab 8 at 1307); and ACME Electric Co. seeks \$10,399,415) (R4, tab 6 at 545). As with its own Delay Claim, Hensel Phelps largely attributes the delays for which these subcontractors seek compensation to a deficient design, subsequent mismanagement of the process of fixing the design, and the downstream impacts of these issues (*see* compl. ¶¶ 7-9, 30, 44, 46, 48, 55, 63-64, 70-72).

13. On May 16, 2025, USACE's contracting officer issued a final decision (COFD) denying the claim in its entirety, except for 25 days of compensable time and one differing-site condition claim, for a total amount of \$120,121. (R4, tab 13). The government later re-issued the COFD with corrected appeal instructions (R4, tab 14).

14. Hensel Phelps appealed to the Board. In due course, it filed a Complaint, which reiterates the allegations in the Delay Claim and asserts two counts, one seeking an equitable adjustment to the Contract and the second seeking damages for breach of

contract. The relief requested in each count tracks the relief requested in the Delay Claim: a compensable 285-day compensable time extension and \$22,050,672 in increased costs and damages.

DECISION

The government seeks dismissal of Hensel Phelps' Delay Claim for failure to meet the "sum certain" requirement for a valid claim.¹ Federal Acquisition Regulation (FAR) 2.101 defines "claim" as "a written demand . . . seeking, as a matter of right, the payment of money *in a sum certain*, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract" (emphasis added); *see also* FAR 52.233-1(c); *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1575 (Fed. Cir. 1995) (because the CDA does not define the term "claim," we look to the FAR for a definition). The government contends that the Delay Claim is not a single, unitary claim but a series of distinct claims that each require a sum certain. Because Hensel Phelps did not apportion the delay days among these allegedly distinct claims, the government argues they must be dismissed.²

As the Court of Appeals for the Federal Circuit has explained,

it is mandatory for a party submitting a claim under the CDA seeking monetary relief to include a sum certain indicating for each distinct claim the specific amount sought as relief. A claim that does not state a sum certain has not sufficiently pleaded the elements of a claim under the CDA and may be denied by the contracting officer and dismissed on appeal to the boards or Court of Federal Claims for failure to state a claim.

ECC Int'l Constructors, LLC v. Sec'y of Army, 79 F.4th 1364, 1380 (Fed. Cir. 2023) (*ECCI*); *see also A4 Constr. Co.*, ASBCA No. 63252 *et al.*, 24-1 BCA ¶ 38,578 at 187,504. While the USACE contracting officer did not contend that Hensel Phelps' Delay Claim failed to meet the sum certain requirement, the government now seeks partial dismissal of its appeal on that ground.

¹ The government does not dispute that the portion of Hensel Phelps' appeal seeking direct costs states a valid claim (gov't mot. at 2) ("HP . . . satisfied the sum certain requirement for its direct costs").

² The Delay Claim specified the dollar amounts Hensel Phelps claims for each day of delay, such that the number of delay days can be converted into a sum certain dollar amount (R4, tab 3 at 190 (fig. 31)).

I. Standard of Review

Dismissal for failure to state a claim is appropriate when the “facts asserted by the [plaintiff] do not entitle him [or her] to a legal remedy,” *Lindsay v. United States*, 295 F.3d 1252, 1257 (Fed. Cir. 2002), or the facts “do not elevate a claim for relief to the realm of plausibility,” *Laguna Hermosa Corp. v. United States*, 671 F.3d 1284, 1288 (Fed. Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). We must “take all factual allegations in the complaint as true and construe the facts in the light most favorable to the non-moving party.” *Inter-Tribal Council of Ariz., Inc. v. United States*, 956 F.3d 1328, 1338 (Fed. Cir. 2020) (quoting *Jones v. United States*, 846 F.3d 1343, 1351 (Fed. Cir. 2017)).³

Our review encompasses “the complaint, matters integral to the complaint, the case record, and the contractor’s claim submitted to the contracting officer.” *Samho Enter.*, ASBCA No. 63587, 25-1 BCA ¶ 38,891 at 189,304. “For purposes of assessing whether an appeal before us states a claim upon which relief can be granted, the primary document setting forth the claim is not the complaint, per se, but the contractor’s claim submitted to the contracting officer.” *Parsons Gov’t Servs.*, ASBCA No. 60663, 17-1 BCA ¶ 36,743 at 179,101.

II. Hensel Phelps Has Adequately Pled a Sum Certain

a. The Sum Certain Requirement Is a Merits Issue

To constitute a valid CDA claim, “[a] claim need not be submitted in any particular form or use any particular wording, but it must provide a clear and unequivocal statement that gives the contracting officer adequate notice of the basis and amount of the claim.” *Tolliver Grp., Inc. v. United States*, 20 F.4th 771, 776 (Fed. Cir. 2021) (quoting *K-Con Bldg. Sys., Inc. v. United States*, 778 F.3d 1000, 1005 (Fed. Cir. 2015)); *Cont. Cleaning Maint., Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1987). While the “sum certain” requirement is mandatory, a CDA claim need not identify a precise monetary amount to meet this requirement if the amount is readily ascertainable to the government; the “primary requirement is that the claim provide the other contracting party with adequate notice of the basis and amount of the claim.” *ECCI*, 79 F.4th at 1376 n.9 (citing *Creative Mgmt. Services, LLC v. United States*, 989 F.3d 955, 962 (Fed. Cir. 2021)).

³ The Board considers motions to dismiss for failure to state a claim even though our rules have no equivalent to Federal Rules of Civil Procedure (FED. R. CIV. P.) 12(b)(6). *Parsons Gov’t Servs., Inc.*, ASBCA No. 60663, 17-1 BCA ¶ 36,743 at 179,101.

The sum certain requirement is not jurisdictional. Rather, it is “an element of a claim for relief—in other words, it is an element of a CDA claim that a claimant must satisfy in order to recover.” *ECCI*, 79 F.4th at 1376. “The sufficiency of a sum certain in a given case is a matter for the Board to explore on the merits.” *Id.* at 1377. The Federal Circuit’s *ECCI* decision anticipated a scenario like the one presented here and explained:

When a claimant presents a statutorily valid CDA claim subject to disagreement on the merits whether the claim comprises one or multiple claims each requiring a sum certain, the fact that the party ‘got it wrong’ by organizing its subclaims in a manner different from how the Board would sub-divide the claims does not mean that the Board lacks authority to hear the case; it speaks instead to a factual dispute on the merits.

Id. at 1377-78; *see also Bahadir Constr. Eng’g Contracting & Trading, Inc.*, ASBCA No. 64038 *et al.*, 26-1 BCA ¶ 39,092 at 190,491; *A4 Constr. Co.*, 24- 1 BCA ¶ 38,578 at 187,504.

b. Identifying Legally Distinct Claims

Whether components of a claim are divisible such that they constitute legally distinct claims depends on the degree to which they share operative facts. “‘If the court will have to review the same or related evidence to make its decision, then only one claim exists. . . . On the other hand, if the claims as presented to the CO will necessitate a focus on a different or unrelated set of operative facts as to each claim, then separate claims exist.’” *Kinetic Builder’s, Inc. v. Peters*, 226 F.3d 1307, 1312 (Fed. Cir. 2000) (quoting *Placeway Constr. Corp. v. United States*, 920 F.2d 903, 907 (Fed. Cir. 1990)). *See also K-Con*, 778 F.3d at 1005 (Fed. Cir. 2015) (“Our longstanding demand that a claim adequately specify both the amount sought and the basis for the request implies that, at least for present purposes, we should treat requests as involving separate claims if they *either* request different remedies (whether monetary or non-monetary) *or* assert grounds that are materially different from each other factually or legally”) (emphasis in original).

c. The Government Has Not Demonstrated that the Delay Claim Asserts Multiple Divisible Claims

The government has not shown that Hensel Phelps’ Delay Claim is necessarily made up of multiple discrete, standalone claims that do not involve the same or related operative facts. At best, it has shown distinct claims *might* exist. Because the Delay Claim supports Hensel Phelps’ position that the delays are intertwined and share

operative facts, this presents a “factual dispute on the merits.” *ECCL*, 79 F.4th at 1378. We cannot resolve such a dispute on this motion and must construe the facts in Hensel Phelps’ favor. *See Bahadir*, 26-1 BCA ¶ 39,092 at 190,491.⁴

The government does not clearly identify which of the components of Hensel Phelps’ Delay Claim it contends are distinct claims, or even how many separate claims it believes exist. Its motion variously suggests that Hensel Phelps should have stated a separate sum certain for “numerous divisible delay claims”; “each source of alleged delay” and each “delay allegation[]”; “well over two-dozen separate claims”; “at least two separate delay claims”; and “the mechanical changes, the electrical power impacts [and] anything else it alludes to in its claim” (gov’t mot. at 2, 13-15). The government’s reply brief is a little clearer. It acknowledges Hensel Phelps’ contention that the Delay Claim is based on changes arising from RFP 92, RFP 123 and RFP 149, but posits that other unstated causes may be “implicated” (gov’t reply at 4). It also suggests that the sources of delay may be divisible into two: those arising from RFP 92 and those arising from RFPs 123 and 149 (*id.* at 6). The fact that the government apparently cannot sub-divide the Delay Claim into distinct claims is a strong indication that the Board should not attempt to do so on its own at this early stage of the litigation.

In any event, the government has not demonstrated that any of the alleged delays described in Hensel Phelps’ Delay Claim can properly be assessed without consideration of operative facts shared with the other alleged sources of delay. *Cf. Placeway*, 920 F.2d at 908 (remanding for fact finding where “[w]e cannot discern from the record any common or related operative facts . . .”). To begin with, the thrust of Hensel Phelps’ Delay Claim is that the delays and additional costs it suffered were due to a hastily prepared design provided by USACE that proved to be deficient and incomplete, compounded by USACE’s decision to address the deficiencies and omissions incrementally during construction rather than fix the design problems at the outset. As the COFD acknowledges, “HP asserts that the [design] documents were incomplete and caused cascading delays across CLINs” (R4, tab 14 at 5274).

To the extent the allegedly defective design documents are the root cause of the various delay and cost impacts, determining Hensel Phelps’ entitlement to

⁴ The government argues that we must “look beyond the face of the claim to the operative facts and determine whether or not the claims rely on distinct, non-common operative facts” (gov’t mot. at 3-4 (citing *Placeway*, 920 F.2d at 908-09)). While that may be part of our ultimate task in deciding the merits of the appeal, such fact-finding is not appropriate on a motion for failure to state a claim. *See Bahadir*, 26-1 BCA ¶ 39,092 at 190,491. *Placeway*, which involved a jurisdictional issue, not an alleged failure to state a claim, does not suggest otherwise.

compensation requires consideration of the same or related operative facts regarding the alleged design flaws. *See KiewitPhelps*, ASBCA No. 62119, 26-1 BCA ¶ 39,078 at 190,401-02, 190,420 n.31 (finding claims alleging cumulative delays and disruptions caused by design flaws and contract mismanagement to be based on a common set of operative facts). While instances of alleged delay flowing from that common cause may involve some unique facts, that does not make it a separate claim from all other delays arising from the same cause. Claims are divisible only if the operative facts shared between them are insubstantial. *See Lee's Ford Dock, Inc. v. Secretary of the Army*, 865 F.3d 1361, 1369 (Fed. Cir. 2017) (“[m]aterially different claims ‘will necessitate a focus on a different or unrelated set of operative facts.’”); *Phillips Construction Co.*, ASBCA No. 27055, 83-2 BCA ¶ 16,618 at 82,659 (multiple claims may exist when each represents “an independent dispute not intertwined in the merits of the other claim items.”); *J.M.T. Mach. Co.*, ASBCA No. 23928 *et al.*, 84- 1 BCA ¶ 17,118 at 85,236 (“a unitary claim has been found where the claims or demands arose out of essentially interrelated conduct or services, and the same or closely connected operative facts.”); *B.D. Click Co., Inc.*, ASBCA No. 25609, 81 - 2 BCA ¶ 15,394 at 76,264 (finding claims legally distinct when each was “an independent dispute concerning contractual rights and is not intertwined in the merits of any of the other requests for equitable adjustment.”). Construing the facts in Hensel Phelps’ favor, its entitlement to delay damages appears to necessitate consideration of a common, intertwined set of operative facts relating to USACE’s provision of an allegedly defective design and alleged mismanagement flowing from the flawed design.

In addition, the government’s position that the Delay Claim is made up of a collection of standalone delay claims that could be decided in isolation from one another is inconsistent with precedent establishing how delay claims on complex construction projects should be addressed. A proper delay analysis in situations like this usually requires a comprehensive assessment of the project to determine the critical path, establish what effect the alleged delay events had on the critical path, and account for all potential concurrent delays that might also have impacted the critical path. *Kinetic Builder’s*, 226 F.3d at 1316-17 (“the contractor must show that the government’s actions affected activities on the critical path of the contractor’s performance of the contract”) (citing *Essex Electro Engineers*, 224 F.3d 1283, 1295 (Fed. Cir. 2000)); *Insulation Specialties, Inc.*, ASBCA No. 52090, 03-2 BCA ¶ 32,361 at 160,101 (contractor bears the overall burden to “prove that the Government was the sole cause of the delay and that the [contractor] did not contribute to or concurrently cause such delay.”).

As we have held, “[t]o be credible, a contractor’s CPM analysis ought to take into account, and give appropriate credit for, all of the delays which were alleged to have occurred.” *Galaxy Builders, Inc.*, ASBCA Nos. 50018, 50136, 00-2 BCA ¶ 31,040 at 153,282 (quoting *Gulf Contracting, Inc.*, ASBCA No. 30195 *et al.*,

89 - 2 BCA ¶ 21,812 at 109,759); *see also Wilner v. United States*, 26 Cl.Ct. 260, 263 (1992) (“Essential to a determination that an activity belongs on the critical path of a project is an understanding of how that activity affects the other activities.”) Delay claims that fail to consider the overall, dynamic project schedule and instead employ isolated, localized, or fragmented analysis are legally insufficient. *Mega Constr. Co., v. United States*, 29 Fed. Cl. 396, 427-28 (1993). A principal reason for this is that the outcome of one alleged delay could affect the outcomes of others. *See Essex Electro Eng’rs, Inc. v. Danzig*, 224 F.3d 1283, 1296 (Fed. Cir. 2000) (instructing Board on remand “not to focus on each discrete period of delay” because “[t]hat type of instance-by-instance analysis of the delays could result in distortion of the proper measure of delay.”)

Accordingly, Hensel Phelps is entitled to compensation for an instance of alleged delay only if it is on the critical path and the government is solely responsible for it. Those things can only be determined by a holistic assessment of the state of the Project during the relevant time period so that any concurrent delays (including any overlapping government-caused delay) can be identified and taken into account. In fact, according to the claim, the critical path analysis Hensel Phelps relies on for its Delay Claim is based on an analysis of the entire project and purports to account for all potential concurrent delays. It appears, then, that consideration of a substantial body of common operative facts will be needed to resolve whether and to what extent Hensel Phelps is entitled to compensable delay, especially because the alleged critical delay events all apparently occurred during the same time period (Window 2) and in the same location (CLIN 0002 West and Southwest Production Areas). *See Bahadir*, 26-1 BCA ¶ 39,902 at 140,492 (sum certain adequately pled where delay claim was organized by delay windows).

The government also contends that the three subcontractors who seek compensation for delays are asserting multiple distinct delay claims that each must state a sum certain. A subcontractor, however, cannot assert a claim directly against the government, absent circumstances not present here. *W.G. Yates & Sons Constr. Co. v. Caldera*, 192 F.3d 987, 990-91 (Fed. Cir. 1999). A prime contractor may sponsor, or “pass through” to the government, a subcontractor claim to the extent that the prime is liable to the subcontractor. *Id.* at 991. Accordingly, the subcontractor submissions are properly understood as claims against Hensel Phelps for which Hensel Phelps in turn seeks to hold the government liable as part of its Delay Claim. They are separate and distinct claims requiring a sum certain only to the extent that they are separate and distinct from Hensel Phelps’ claim. At this stage, however, the subcontractor submissions appear to be “piggybacking” on Hensel Phelps’ overall claim that a defective design (and the way the government handled the design defects) caused a cascading series of problems, which resulted in delays and additional costs for the subcontractors. Resolving these contentions appears to require consideration of the same or related operative facts for the same reasons discussed above with respect

to Hensel Phelps' overall Delay Claim. Each of the subcontractor submissions states a sum certain of the amount to which the subcontractor contends it is entitled and is sufficient to give the contracting officer notice of the basis for its contentions and the amounts it seeks.

With respect to ACME, the government contends that its claim should be dismissed in its entirety, not just as to the delay component, for failure to state a sum certain. The government acknowledges that ACME's claim requests a total of \$10,399,415, which includes extended general conditions of \$1,420,579 for 244 days of delay; 21 requests for equitable adjustments (REAs) totaling \$8,460,268; and costs flowing from "the cumulative impacts of changes," totaling \$518,568 (gov't mot. at 9) (quoting R4, tab 6 at 545-74). Nevertheless, the government characterizes ACME's submission as a series of "separate, factually distinct claims" that must each state a sum certain (gov't mot. at 15). Again, however, we are unable to determine at this stage whether the components of ACME's submission that the government simply asserts are factually distinct are actually intertwined such that they share operative facts.

Finally, we find it noteworthy that the USACE contracting officer that denied Hensel Phelps' Delay Claim, and who is far more familiar with the underlying events than we are, did not consider the Delay Claim to be a series of distinct claims. The COFD raised no concerns about Hensel Phelps' failure to attach a sum certain to each alleged delay event. Thus, the contracting officer does not appear to have believed that the various delay events could or should be assessed as standalone claims but rather understood that a holistic view of all the delays on the project was necessary to resolve them. Because an oft-stated purpose of the sum certain requirement is to allow the contracting officer to settle a claim for the stated amount, *Precision Standard, Inc.*, ASBCA No. 55865, 11-1 BCA ¶ 34,669 at 170,787, the contracting officer's apparent comprehension of the amount claimed is a significant consideration.

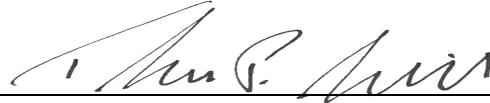
For these reasons, we cannot conclude at this stage that the Delay Claim is a series of standalone claims that could be addressed separately rather than a single claim consisting of a number of intertwined delays that can be resolved only by consideration of at least some of the same operative facts. This distinguishes this case from *A4 Constr.*, on which the government relies. There, we were able to determine from the contractor's claim and complaint that the claim included "separate and distinct subclaims that arise from materially different and unrelated operative facts." 24-1 BCA ¶ 38,578 at 187,503-05. That is not the case here. *See also Bahadir*, 26-1 BCA ¶ 39,902 at 190,491-92 (distinguishing *A4* on grounds equally applicable here).⁵

⁵ It bears noting that, because the determination of whether claims are legally distinct is a merits issue, that issue might not be decided until a time when the

CONCLUSION

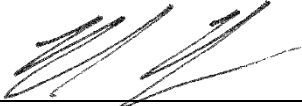
Construing the facts in the light most favorable to Hensel Phelps, as we must, we conclude that Hensel Phelps has adequately stated a claim for which relief may be granted. The government's motion is denied.

Dated: September 14, 2026



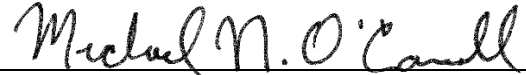
THOMAS P. MCLISH
Administrative Judge
Armed Services Board
of Contract Appeals

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

contractor is time-barred from submitting to the contracting officer a revised claim supplying a required sum certain found to be missing from the original claim. *See Bahadir*, 26-1 BCA ¶ 39,902 at 190,491 n.4.

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. 64327, Appeal of Hensel Phelps Construction Company, rendered in conformance with the Board's Charter.

Dated: September 14, 2026



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