ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -	)	
	)	
Warrior Construction Services, Inc.	)	ASBCA No. 64497
	)	
Under Contract No. W911SG-25-C-A008	)	

APPEARANCE FOR THE APPELLANT: Mr. Randel C. Widener
Owner

APPEARANCES FOR THE GOVERNMENT: Dana Chase, Esq.
Army Chief Trial Attorney
MAJ Jane K. Riddle, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE ARNETT

This appeal arises from the denial of a claim asserted by Warrior Construction Services, Inc. (Warrior) for additional costs arising from defective specifications in the above-referenced contract with the U.S. Army (the government or respondent). The government asserts that conflicts in the contract drawings present a patent ambiguity and Warrior should bear the financial consequences because it failed to inquire prior to bid.

Warrior elected to pursue this appeal pursuant to the Board's Rule 12.2, Small Claims (Expedited) procedure. Accordingly, this decision shall have no precedential value, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside. 41 U.S.C. § 7106(b)(4)-(5). Warrior also pursued this appeal pursuant to Board Rule 11, in which the decision rests upon written evidence without courtroom testimony. Based on the following, we deny Warrior's appeal.

FINDINGS OF FACT

1. On May 8, 2025, the government issued Solicitation No. W911SG25BA002 which was a 100% competitive set aside for veteran-owned small businesses to submit sealed bids for a firm fixed-price contract to repair and rebuild Route 219 (the Project) at White Sands Missile Range, New Mexico (R4, tab 1).

2. The Solicitation defined the Project as removal and replacement of the existing roadway (*id*. at 10). The work included widening the roadway from 18 to 24 feet, removal and off-site disposal of existing asphalt and base, processing subgrade

and new basecourse, and application of tack coat, new asphalt, pavement markings, and traffic signs (*id.*).

3. Issued for Construction Drawings accompanied the Solicitation and consisted of five pages including the following pertinent notes (R4, tab 2):

a. Drawing 4, Detail D1 depicted the Project Limits as an 18-foot-wide straight section of asphalt extending 0.60 mile (*id.* at 69).

b. Drawing 4, Note 2 stated, "Contractor shall remove asphalt (0.60 miles in length at 18 feet wide) surface course and dispose of off-site . . . ." (*id.*).

c. Drawing 4, Note 6 indicated that the new asphalt shall be 24 feet with a "minimum thickness of 3 inches" and "shall match existing elevation and slopes to provide a smooth transition" with backfill at the edge of pavement (*id.*).

d. Drawing 2, General Note 13 indicated that the contractor would apply approximately 8,500 square yards (SY) of new asphalt (*id.* at 67).

e. Drawing 2, General Note 18 stated, "Construction limits extend the entire length of the project area and 50 feet from the road center line on each side of roadway. Contractor shall not disturb or damage any areas outside the construction limits." (*id.*).

4. On May 20, 2025, the government conducted a site visit for the Project; a representative of Warrior attended (R4, tabs 4, 23 at 292).

5. On May 30, 2025, the government issued Amendment No. 1 which incorporated updated drawings (Updated Drawings) (R4, tabs 5 at 100, 6 at 148-53). The Updated Drawings consisted of six pages and included the following pertinent information:

a. Drawing 4, Detail D1, Project Limits had a bubble around it indicating a change. It depicted a straight section of asphalt extending 0.60 miles like the previous version; however, it added an 18-foot-wide L-shaped section which extended 520 feet perpendicular from Route 219 to a gate. (R4, tab 6 at 151)

b. Drawing 5 was a new drawing with a bubble around the entire drawing indicating a change. It included a graphic depiction of the 520-foot L-shaped section indicated in Drawing 4, Detail D1 and General Note 2 which

stated, "Construct concrete turn down curb at the end of each driveway and end of roadway at the gates, for a total of 5." (*Id.* at 152)

c. Drawing 2, General Note 13 was unchanged, still indicating that the contractor would apply approximately 8,500 SY of new asphalt despite the addition of the 520-foot L-shaped section (*id.* at 149).

d. Drawing 2, General Note 17 was unchanged and continued to state, "Construction limits extend the entire length of the project area and 50 feet from the road center line on each side of roadway. Contractor shall not disturb or damage any areas outside the construction limits." (*id.*).

6. We estimate that the new 520 LF section at 24 feet wide would have required approximately 1,387 SY[1] of asphalt in addition to the 8,500 SY specified in the original drawings and Drawing 2, General Note 13 of the Updated Drawings. Thus, the total asphalt should have been revised to approximately 9,887 SY. We find that Drawing 2, General Note 13 of the Updated Drawings did not revise the total volume of asphalt to account for the 520 LF section added through Amendment No. 1. We also find that the stated construction limits in General Note 17 on Drawing 2 conflict with the addition of the L-shaped 520-foot section.

7. On June 13, 2025, the government issued Amendment No. 2 which extended the bid due date to June 18, 2025 (R4, tab 8).

8. On June 16, 2025, Warrior submitted its bid which acknowledged Amendment No. 1 on June 13, 2025, and included a digitally-signed copy of the Updated Drawings (R4, tab 9 at 173, 192-97).

9. On August 4, 2025, the government notified Warrior that it submitted the lowest bid and was selected for award (R4, tab 10).

10. On October 15, 2025—approximately six weeks after the preconstruction meeting, Warrior submitted RFI No. 1 which stated:

> During our review of the project documents, we identified a discrepancy between the narrative description and the current drawings. Per Sheet 4, the Project Area' is listed as 0.60 miles. Are the lines drawn to show that there is a gate at the end of 500 feet and we are to add a concrete turndown only? Per Sheet 5, the note calls out a turndown

[1] A rough estimate of the additional asphalt is 520 LF (173.33 yards) x 24 LF (8 yards) for a total of 1,386.64 SY.

> curb at the gate, but does not call out any other notes pertaining to new asphalt. Sheet 3 only shows the 3 driveways. Our understanding per the bid documents is that the entire project encompasses 0.60 miles.

(R4, tab 14 at 266). Warrior's proposed solution was either a change order "to include the additional 520 feet of 24' paving" or to "keep the entire Route 219 at 18 feet, and include the 520 feet at 18 feet" (*id.*).

11. The government responded that there was "no need for a change order" and directed Warrior to "place concrete turn downs as detailed on sheet 5, concrete turn downs 50 ft from edge of RR 219 at driveway transitions and at each gate location" (*id.*).

12. On October 24, the government requested a proposal from Warrior for costs associated with the 520 LF of asphalt at a width of 24 feet (app. supp. R4, tab A-4).

13. On October 28, 2025, Warrior submitted a proposal in the amount of $229,762.90 to perform the 520 LF of asphalt at a width of 24 feet (R4, tab 16 at 271-73).

14. On December 16, 2025, the contracting officer (CO) determined that Warrior was not entitled to additional compensation and stated, "Failure to comply with the full scope of work and Government's decision will be considered as contractor's failure to abide by the terms and conditions of the contract and therefore, in default" (R4, tab 17).

15. On December 17, 2025, Warrior emailed the CO indicating that it did not concur with the government's decision but agreed to complete "the additional 520 LF of roadway at a width of 18 feet wide" (R4, tab 18 at 278-79). In response, the CO asserted that the width for the "additional 520 LF of roadway" was "24 feet, not 18, as per referenced addendum provided on May 30, 2025" (*id.* at 277). The CO requested confirmation that Warrior would complete the additional 520 LF at a width of 24 feet (*id.* at 275-77). In a subsequent email, the CO stated, "After speaking with the requiring activity and further consideration, the Government will be okay with 18 Feet, ONLY for the side road of 520 LF. The main road will still have to be completed at 24 feet." (*id.* at 275). The CO requested confirmation that Warrior would complete the project using a width of 24 feet for the main road and 18 feet for the 520 LF side road (*id.*). Warrior responded, "Please allow this letter to serve as confirmation Warrior Construction Services agrees to complete the project at 24 feet on main road and 18 feet wide on the 520 LF side road. We appreciate the consideration given and will look forward to delivering a quality project." (*id.*).

16. On December 23, 2025, the government executed Modification No. P00002 which included a revised Drawing 3 depicting the 520 LF asphalt section at a width of 18 feet from Route 219 to the gate (app. supp. R4, tab A-5 at 281).[2] We find that Modification No. P00002 reduced the volume of asphalt required for the 520 LF section from approximately 1,387 SY to approximately 1,040 SY[3].

17. On March 23, 2026, Warrior submitted a claim for $98,438 for costs arising from the 520 LF section which it asserted were not included in its proposal (R4, tab 21 at 286-88). On March 25, 2026, the government issued a contracting officer's final decision denying Warrior's claim (R4, tab 22 at 289-91).

18. On April 1, 2026, Warrior filed a notice of appeal, which the Board docketed as ASBCA No. 64497.

DECISION

The Parties' Contentions:

Warrior asserts that it incurred additional costs arising from "conflicting and defective contract documents" which created ambiguity in the project length, construction limits, and asphalt surface quantities and that it reasonably relied upon its interpretation of the contract at the time of bid (compl. at 1-2). Warrior argues that, after it identified discrepancies and sought clarification, the government altered the scope of work, resulting in a constructive change to the contract (*id.*). In its brief, Warrior asserts that the contract documents established four critical scope parameters—project length, construction limits, asphalt quantities, and depiction of the roadway—which, when read together, do not present a single, internally consistent definition of the required work (app. br. at 10-13). Warrior contends that the additional 520 LF section of asphalt was "not clearly incorporated into the originally defined project limits" (*id*. at 18-19). Warrior argues that its interpretation is objectively reasonable and harmonized three of the four parameters—project length, construction limits, and asphalt quantities (*id*. at 15).

The government acknowledges "obvious internal ambiguities" in the contract drawings and asserts that such ambiguities are patent (gov't br. at 9-11). The government argues that Warrior had a duty to seek clarification prior to submitting its bid, failed to do so, and assumed the financial risk of performance (*id*. at 8). Specifically, the government contends, "An objective, reasonable construction

[2] Modification No. P00002 appears to have been issued unilaterally since the copy in the record is only signed by the government (app. supp. R4, tab A-5 at 281).

[3] A rough estimate of the revised asphalt is 520 LF (173.33 yards) x 18 LF (6 yards) for a total of 1,040 SY.

contractor reviewing these modified drawings before bidding would recognize the discrepancy between the mathematical paving quantities (8,500 SY and 0.60 miles) and the L-shaped layout of the road in multiple drawings" (*id.* at 10).

Neither party can harmonize all provisions of the contract.

In contract interpretation, the contract "must be considered as a whole and interpreted so as to harmonize and give reasonable meaning to all of its parts." *NVT Tech., Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004). An interpretation that gives meaning to all parts of the contract is preferred over one that leaves a portion of the contract useless, inexplicable, void, or superfluous. *Gould Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991).

Here, neither interpretation harmonizes all provisions of the contract. Warrior would have us focus on the project length, construction limits, and asphalt quantities but ignore the L-shaped 520 LF section of asphalt added by Amendment No. 1. This interpretation would render superfluous Amendment No. 1 and is not reasonable. We reject Warrior's contention that the 520 LF L-shaped section was not part of the contract at award since the change was clearly highlighted on Updated Drawings 4 and 5 (finding 5a-b). Conversely, the government would have us embrace the L-shaped 520 LF section of asphalt added by Amendment No. 1 while acknowledging "obvious internal ambiguities" in the Updated Drawings between the additional 520 LF of asphalt and the project length, construction limits, and stated asphalt quantities (gov't br. at 9-11). We conclude that the contract terms cannot be reconciled with one another.

Typically, ambiguities in a government contract are resolved 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 patent such that it is "obvious, gross [or] glaring," then the contractor has a duty to inquire as to the meaning of the contractual provision. *NVT Tech.,* 370 F.3d at 1162. "More subtle ambiguities are deemed latent and accorded an interpretation favorable to the contractor." *Gen. Dynamics—Nat'l Steel and Shipbuilding Co*., ASBCA No. 61524, 22-1 BCA ¶ 38,067 at 184,824.

The conflicts in the Updated Drawings are obvious.

Here, Drawings 4 and 5 of the Updated Drawings added a 520 LF section of asphalt (approximately 1,387 SY[4]) which substantially exceeded the 8,500 SY

[4] A rough estimate of the additional asphalt is 520 LF (173.33 yards) x 24 LF (8 yards) for a total of ~1,387 SY.

specified in the original and Updated Drawings (finding 6). Despite this significant addition, the government failed to revise the estimated total amount of asphalt, the project length, or the limits of construction to account for the 520 LF section. We are reluctant to reward the government for the abysmal state of its drawings. However, we cannot agree with Warrior's assertion that the ambiguity is latent.

The conflicts here are obvious. The Updated Drawings consisted of only six drawings. Two of the six drawings (Drawings 4 and 5) included bubbles highlighting the addition of the 520 LF section (finding 5a-b). This additional asphalt section clearly increased the total asphalt needed for the project. The issues with the drawings were so glaring that they should have triggered an inquiry by Warrior prior to bid.

Modification No. P00001 reduced the asphalt scope of work.

Warrior also contends that the government altered the scope of work resulting in a constructive change to the contract. We disagree. To demonstrate a constructive change, Warrior must show that it performed work beyond the contract requirements and that the government ordered, expressly or impliedly, the additional work. *Thalle Constr. Co*., ASBCA No. 63685, 25-1 BCA ¶ 38,892 at 189,310 (citing *Bell/Heery v. United States*, 739 F.3d 1324, 1335 (Fed. Cir. 2014)). Warrior cannot satisfy these elements.

Here, Modification No. P00002 did not add work to the contract. Rather, it reduced the width of the 520 LF section from 24 to 18 feet, thereby reducing the required volume of asphalt (finding 16). Contemporaneous exchanges between the parties suggest that Modification No. P00002 was a compromise to address Warrior's concerns regarding the 520 LF section and conflicts in the Updated Drawings (finding 15).

Warrior's constructive change argument is unavailing.

CONCLUSION

For the reasons stated, the appeal is denied.

Dated: August 7, 2026



LAURA J. ARNETT
Administrative Judge
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. 64497, Appeal of Warrior Construction Services, Inc., rendered in conformance with the Board's Charter.

Dated: August 6, 2026



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