ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -	)	
	)	
VAE, Inc.	)	ASBCA Nos. 64437, 64464, 64465
	)	
Under Contract No. NNG15SC94B	)	
Delivery Order No. HC102821F0036	)	

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OPINION BY ADMINISTRATIVE JUDGE HAMADY ON THE GOVERNMENT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

VAE, Inc. (VAE or appellant) filed an appeal from a deemed denial of its claim involving a contract to provide a suite of products and services in support of the Joint Regional Security Stacks (JRSS)[1] for U.S. Pacific Command (PACOM). The Defense Information Systems Agency (DISA or government) filed a motion to dismiss the appeal for failure to state a claim; or in the alternative to consolidate ASBCA No. 64437 with ASBCA Nos. 64464 and 64465. On July 8, 2026, the Board issued an order granting the government's motion in part, by consolidating the appeals. This decision addresses the government's motion to dismiss ASBCA No. 64437 for failure to state a claim. For the reasons set forth below, we mostly deny the government's motion.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

1. On or about May 1, 2015, the National Aeronautics and Space Administration (NASA), awarded an indefinite quantity Solutions for Enterprise-Wide

[1] The JRSS is a cybersecurity program (gov't mot. at 1).

Procurement (SEWP) contract NNG15SC94B to VAE (SEWP contract) (R4, tab 1; compl. ¶ 1; answer ¶ 1).

2. Section A.1.2. of the contract specified the supplies and services to be furnished under categories A through D, which were generally described as computer systems, servers, mass storage devices, server support services, networking, security, and video and conference tools (R4, tab 1 at 12).[2]

3. Section A.1.3 of the contract provided that the supplies and services furnished under the contract will be specified by issuance of delivery orders from any United States Government agency (*id.* at 13).

4. On December 1, 2020, DISA awarded delivery order (delivery order or DO) HC102821F0036 to VAE under the SEWP contract (R4, tab 6; compl. ¶ 4; answer ¶ 4). The DO had a base year and two option years, and required VAE to provide hardware, software, hardware maintenance and software support by InQuest as specified in the exhibits A through D to the DO (R4, tabs 6 at 3, 6; 6a-d). CLIN 0001 required the provision of various InQuest software, hardware and support services for the base year (R4, tabs 6 at 3; 6a; compl. ¶ 7; answer ¶ 7). CLIN 0002, if exercised, required the provision of additional optional quantities of software, hardware and support services for the base year (R4, tabs 6 at 4; 6b). CLINs 1001 and 2001 required the provision of InQuest hardware maintenance and software support for option year one and two, respectively, if exercised. (R4, tabs 6 at 5; 6c-d).

5. On January 29, 2021, DISA issued Modification No. P00001 to the DO, exercising CLIN 0002 (R4, tab 7; compl. ¶ 8; answer ¶ 8). Additional items from CLIN 0002 were ordered, modified, or deleted via Modification Nos. P00002, P00003, P00004, P00005, P00006 to the DO (R4, tabs 8-12). VAE alleges that the license agreement for the products and services procured by P00005, began with the March 24, 2022 delivery to the government (compl. ¶ 17).

6. The InQuest products and services procured via Modification No. P00005 are the subject of VAE's claim (compl. ¶¶ 11, 13; R4, tab 27a at 2).

7. On December 1, 2021, DISA issued Modification No. P00007 to the DO, exercising option year one of the contract for the period beginning December 1, 2021

[2] The government's Rule 4 file is continuously paginated, as if the entire file is one document even though it consists of tabs 1 through 44, which in turn each contain one or more documents (e.g., tab 6 contains tabs 6, 6a, 6b, 6c, and 6d). For ease of reference, the Board will cite to the Rule 4 tab number and (.pdf) page number of each document, rather than the page number stamped on the documents themselves.

through November 30, 2022 (R4, tab 13). DISA did not exercise option year two (R4, tab 27a at 4).

8. On November 19, 2024, VAE submitted a claim to the contracting officer. It alleged the government continued to use the InQuest products and services (procured via Modification No. P00005) past their March 23, 2023 license and subscription expiration dates without reimbursing VAE (R4, tabs 27; 27a at 1-5; compl. ¶¶ 27, 31).

9. On January 21, 2026, VAE appealed to the Board from a deemed denial of this claim. This appeal was docketed as ASBCA No. 64437.

10. On February 26, 2026, VAE submitted its complaint in ASBCA No. 64437, in which VAE alleged that (i) the government procured InQuest products and services via Modification No. P00005 to the DO (compl. ¶¶ 10-11); (ii) the licenses for those products and services were "incorporated into and part of the [Delivery] Order" (compl. ¶ 41); (iii) the government breached its obligation under the delivery order because it used the InQuest products and services beyond the twelve-month period specified in the licensing agreements; and, (iv) VAE was damaged because the government failed to reimburse VAE for the government's continued use of the InQuest products and services beyond the term specified in the licensing agreements in the amount of roughly $7 million (compl. ¶¶ 14-15, 27, 31, 43-44).

11. On July 30, 2025, VAE submitted another claim related to the same DO, but involving software, hardware and support services provided by a different vendor (MetaDefender) (R4, tabs 30, 30a). On February 17, 2026, VAE appealed the deemed denial of that claim and the contracting officer's final decision on that claim. The Board docketed those appeals as ASBCA Nos. 64464 and 64465, respectively.

12. On July 8, 2026, the Board issued an order consolidating ASBCA No. 64437, with ASBCA Nos. 64464 and 64465.

DECISION

1. The Parties' Contentions

The government contends that VAE has failed to state a claim "that is 'plausible on its face'" because the allegations in VAE's complaint are not specific enough or adequately supported by citations to project records, leaving "large informational gaps, which can only be filled with speculation and surmise" (gov't mot. at 2-3, 6). As support for this argument, the government's motion lists several examples that can be broadly categorized as evidence that (1) the complaint lacks

particularity and relies on vague, conclusory language (gov't mot. at 3-5);[3] and, (2) appellant failed to provide adequate factual support for allegations made in the complaint.[4] VAE contends the government's motion is "frivolous and has no basis in fact or law" because VAE has alleged sufficient facts to establish a breach of contract claim (app. resp. at 1, 3-4). We agree that the government's motion should be denied.

2. Standards for Motions to Dismiss Based on Failure to State a Claim

As an initial matter, while the Board's rules do not include a rule equivalent to FED. R. CIV. P. 12(b)(6) or 12(c), "we permit motions to dismiss for failure to state a claim upon which relief may be granted." *Fluor Intercontinental, Inc.*, ASBCA Nos. 62550, 62672, 22-1 BCA ¶ 38,105 at 185,095. "To survive a motion to dismiss, a complaint must contain sufficient factual matter[s], accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *accord Parsons Gov't Servs., Inc.*, ASBCA No. 60663, 17-1 BCA ¶ 36,743 at 179,100 (stating the Board will deny a motion to dismiss for failure to state a claim when the complaint alleges "facts plausibly suggesting [] a showing of entitlement to relief"). Accordingly, the Board accepts all factual pleadings as true and draws all reasonable inferences in favor of the claimant. *Kellogg Brown & Root Servs., Inc. v. United States*, 728 F.3d 1348, 1365 (Fed. Cir. 2013). For purposes of assessing whether the claim before us states a claim upon which relief can be granted, the Board is "not limited to the four-corners of the complaint" and may review "'matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned[.]'" *Fluor Intercontinental, Inc.*, 22-1 BCA ¶ 38,105 at 185,096 (citations omitted).

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[3] For instance, the government complains that VAE states that "'DISA attempted to exercise' an [o]ption" but did not define or explain "what it means to 'attempt to exercise'" (gov't mot. at 4). In another example, the government complains that VAE "blandly asserts, 'DISA and all of its employees had full access to and knowledge of the terms of these license agreements'" and that "[t]his is an ultimate consequence of material fact which Appellant fails to plead . . . ." (gov't mot. at 4-5).

[4] For instance, the government complains that VAE alleges that "for each order, the initial license and subscription began on the date the products were shipped" and that VAE failed to provide support for the allegation such as citing the contract (gov't mot. at 4). In another example, the government complains that VAE alleges "the JRSS program was late in sending funding" and that VAE failed to "specify when the funding was due, how much it was and how late it was" (*id.*).

3. Breach of Contract Claim

With these standards in mind, the Board turns first to VAE's breach of contract claim. As a preliminary matter, the government fails to advance its argument. Specifically, the government does not identify the requisite elements of a breach of contract claim, nor does it articulate how VAE's complaint falls short of establishing any one of the elements.[5] Instead, the government focuses its challenge on the vagueness of the terminology within the allegations and the evidentiary adequacy of the support provided. At the motion to dismiss stage, however, the Board evaluates "only whether the claimant is entitled to offer evidence in support of its claims, not whether the claimant will ultimately prevail." *AECOM Technical Servs., Inc.*, ASBCA No. 62800, 22-1 BCA ¶ 38,064 at 184,807 (citing *Parsons Gov't Servs., Inc.*, 17-1 BCA ¶ 36,743 at 179,101).

To prevail on a breach of contract claim, the contractor must show: "(1) a valid contract between the parties; (2) an obligation or duty on the part of the government arising out of the contract; (3) a breach of that duty; and (4) damages caused by the breach." *CiyaSoft Corp.*, ASBCA Nos. 59519, 59913, 18-1 BCA ¶ 37,084 at 180,520 (citing *Lockheed Martin Integrated Sys., Inc.*, ASBCA Nos. 59508, 59509, 17-1 BCA ¶ 36,597 at 178,284). VAE's complaint sufficiently pleads each of these elements. First, VAE alleges the existence of a contract (SOF ¶ 10; compl. ¶¶ 1, 4, 5-11, 14, 40-41). Second, VAE alleges the government had a duty to honor the license agreements because they were incorporated into the contract (SOF ¶ 10; compl. ¶¶ 10-15, 37, 41-42). Third, VAE alleges the government breached this duty by continuing to use the InQuest products and services beyond the term specified in the license agreements (SOF ¶ 10; compl. ¶¶ 27-31, 38, 43). Fourth, VAE alleges it suffered roughly $7 million in damages as a result of the government's breach and failure to pay VAE for continued use of the InQuest products and services (SOF ¶ 10;

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[5] In its reply brief, the government raises a new argument to support its motion to dismiss, contending that VAE cannot establish a breach of contract claim because a different company, OPSWAT, now owns the InQuest licenses at issue, meaning DISA owed no contractual duty to VAE or InQuest (gov't reply at 1-2). Because the government raised this issue for the first time in its reply, VAE did not have an opportunity to respond. Generally, "arguments not raised in the opening brief are [forfeited]." *Wash World Inc. v. Belanger Inc.*, 131 F.4th 1360, 1374 (Fed. Cir. 2025) (citing *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1319 (Fed. Cir. 2006)); *accord CliniComp Int'l v. United States*, 135 Fed. Cl. 477, 482 (Fed. Cl. 2017) (stating that a party "may not raise new arguments in a reply brief"); *see also Sayar Dev., Inc.*, ASBCA No. 63871 *et al.*, 26-1 BCA ¶ 39,029 at 190,069 (noting that arguments raised for the first time in appellant's reply brief are not properly before the Board). Accordingly, the Board will not consider this argument.

compl. ¶¶ 31, 44; compl. at 7-8). Accordingly, VAE has alleged sufficient facts to state a plausible claim for breach of contract.

As for the government's arguments about the vagueness of terms used in the complaint, the Board notes that in considering a motion to dismiss we "look at the substance of a claim alleged and not merely at the language used in stating it." *Kolar, Inc.*, ASBCA No. 28482, 84-1 BCA ¶ 17,044 at 84,855-56. Thus, the government's argument regarding the vagueness and lack of particularity and specific evidence misconstrue the standard at the motion to dismiss stage. Again, a complaint need not prove VAE's case; it must only allege facts that plausibly suggest entitlement to relief. As we have already found, VAE's complaint more than adequately alleges facts sufficient to establish a breach of contract claim.[6]

4. Quantum Meruit

We turn next to VAE's alternative theory in Count II of its complaint that it is entitled to recover damages resulting from the government's continued use of the InQuest products and services under an implied-in-fact contract on the basis of quantum meruit (compl. ¶¶ 45-49). Despite its heading, this count of VAE's complaint is ambiguous as to whether it is alleging an implied-in-fact contract or entitlement to relief under quantum meruit. Specifically, VAE alleges "DISA has benefited from" its continued use of the licenses without payment, entitling VAE to recover their value (compl. ¶¶ 48-49). This portion of the complaint is plainly alleging entitlement to relief under the theory of *quantum meruit*.

Generally, "recovery under *quantum meruit* requires a contract implied-in-law." *Futures, Inc.*, ASBCA No. 61566, 26-1 BCA ¶39,041 at 190,165 (citing *Int'l Data Products Corp. v. United States*, 492 F.3d 1317, 1325 (Fed. Cir. 2007)). In such cases "there is no actual agreement between the parties, but the law imposes a duty in order to prevent injustice." *Int'l Data Products Corp.*, 492 F.3d at 1325. To the extent VAE seeks recovery under an implied-in-law contract because "DISA benefited from" using its products and services, the Board lacks jurisdiction. *Futures*, 26-1 BCA ¶ 39,041 at 190,165; *see also Relyant Global, LLC*, ASBCA No. 63024, 22-1 BCA ¶ 38,205 at 185,539 (explaining the Board lacks jurisdiction to consider an unjust enrichment claims because they are based on contracts implied-in-law) (citing *Cross Country Indus., Inc. v. United States*, 231 Ct. Cl. 899, 901 (1982)). The Board does possess jurisdiction to entertain quantum meruit claims in the limited instance where a contractor performed pursuant to an express contract that was later set aside as unlawful. *Futures*, 26-1 BCA ¶ 39,041 at 190,165. For example, "[w]here a benefit

[6] The Board notes that the government's complaints about the particularity and vagueness of some of appellant's allegations are more properly the subject of interrogatories made in discovery, rather than a motion to dismiss.

has been conferred by the contractor on the government in the form of goods or services, which [the government] accepted" a contractor may recover on a *quantum meruit* basis the value of the goods or services received by the government prior to recission of the contract for invalidity." *Int'l Data Products Corp.*, 492 F.3d at 1325-26. VAE has made no allegation in its complaint that it performed an express contract that was set aside for illegality, thus, there is no legal basis to grant VAE relief under the theory of *quantum meruit*. Accordingly, to the extent that the complaint requests relief under the theory, we grant the government's motion to dismiss that portion of the complaint.

Nevertheless, in paragraph 47 of the complaint, VAE alleges the existence of an implied-in-fact contract, which presumably the government has breached. To the extent VAE is alleging recovery based on an implied-in-fact contract based on representations made by Franco Canton, DISA's Branch Chief of the JRSS Program Control Branch (see discussion below), the Board possesses jurisdiction. *See Relyant*, 22-1 BCA ¶ 185,539 (citing *Lee v. United States*, 895 F.3d 1363, 1374 (Fed. Cir. 2018) and *United States v. Amdahl Corp.*, 786 F.2d 387, 393 (Fed. Cir. 1986)).

To establish an implied-in-fact contract, a contractor must show: "(1) mutuality of intent; (2) consideration; (3) an unambiguous offer and acceptance; and (4) 'actual authority' on the part of the government's representative to bind the government in contract." *Network Documentation & Implementation, Inc.*, ASBCA No. 61804, 20-1 BCA ¶ 37,624 at 182,658 (citing *Hanlin v. United States*, 316 F.3d 1325, 1328 (Fed. Cir. 2003)). As with VAE's breach of contract claim, the government's motion fails to identify any specific deficiencies in VAE's pleading concerning these elements. Nonetheless, the Board reviews the sufficiency of the complaints' allegations below.

First, regarding mutuality of intent, VAE's complaint details the parties' communications concerning the expiration of product licenses and VAE's continued support – at the government's request – after option year one expired (compl. ¶¶ 20-26). Second and third, VAE has alleged facts sufficient to establish offer, acceptance, and consideration. Specifically, VAE alleges that the government requested a temporary extension of the subject licenses, and VAE, in turn, issued those licenses based on the government's assurances. These assurances included representations that the government was "arrang[ing] for payment of past due maintenance as well as the renewal for 2024," "would exercise Option Year 2," and that "the contractual situation was being rectified" (compl. ¶¶ 22, 25; R4, tab 27a at 4, 6). Fourth, regarding the requirement of a government representative with actual authority, VAE's claim contains an email indicating that InQuest "extended all of the InQuest device licenses" and continued to "field/support the tickets" at the request of Franco Canton, DISA's Branch Chief of the JRSS Program Control Branch (R4, tab 27a at 20-23). While Mr. Canton's actual authority to bind the government is a factual matter to be developed during discovery, VAE's allegation that it extended the

InQuest licenses at the request of a DISA Branch Chief is sufficient at the pleading stage. Drawing all reasonable inferences in VAE'S favor, the complaint plausibly alleges that the requests originated from a government representative with at least implied actual authority. To be sure, we are highly skeptical that this claim will survive since "[i]t is well settled that the existence of an express contract precludes the existence of an implied-in-fact contract dealing with the same subject matter, unless the implied contract is entirely unrelated to the express contract." *Schism v. United States*, 316 F.3d 1259, 1278 (Fed. Cir. 2002) (en banc) (citing *Atlas Corp. v. United States*, 895 F.2d 745, 754-55 (Fed. Cir. 1990)); *see also Trauma Service Group v. United States*, 104 F.3d 1321, 1326 (Fed. Cir. 1997). Nevertheless, this argument was not made by the government, and in the absence of briefing on it, at this stage in the proceedings, we are inclined to let the matter go forward. Accordingly, the Board concludes that VAE has alleged sufficient facts to plausibly state a claim for the existence of an implied-in-fact contract for the InQuest goods and services utilized by the government after the license periods expired.

CONCLUSION

For the foregoing reasons, we deny the government's motion to dismiss for failure to state a claim except that the portion of the complaint in Count II seeking recovery in *quantum meruit* is dismissed.

Dated: September 9, 2026

Robyn L. Hamady

ROBYN L. HAMADY
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

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

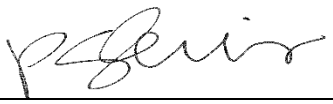
I concur

David D'Alessandris

DAVID D'ALESSANDRIS
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 Nos. 64437, 64464, 64465, Appeals of VAE, Inc., rendered in conformance with the Board's Charter.

Dated: September 9, 2026



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