

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
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Versar, Inc. ) ASBCA No. 56857  
 )  
Under Contract No. FA8903-04-D-8692 )

APPEARANCES FOR THE APPELLANT: David R. Johnson, Esq.  
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Washington, DC

APPEARANCES FOR THE GOVERNMENT: Richard L. Hanson, Esq.  
Air Force Chief Trial Attorney  
Col Thomas J. Hasty III, USAF  
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Maj Sandra Whittington, USAF  
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OPINION BY ADMINISTRATIVE JUDGE SCOTT  
ON GOVERNMENT’S MOTION TO DISMISS IN PART FOR  
LACK OF JURISDICTION

Appellant Versar, Inc.’s \$2,839,461.40 claim under the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, which arises under task order (TO) No. 16 of appellant’s multiple award indefinite delivery indefinite quantity (IDIQ) contract with the Air Force, is at issue in ASBCA No. 56857. As part of its prayer for relief in its complaint, appellant asked the Board to order the Air Force Center for Engineering and the Environment (AFCEE) “to rescind its ‘red’ rating for the Project” (compl. ¶ 114). The Air Force initially moved for partial summary judgment on the ground that the Board lacks jurisdiction to consider appellant’s prayer for relief from its “red” performance rating and has no authority to order the contracting officer (CO) to rescind it. In its reply brief, the Air Force further contended that the Board lacks jurisdiction over the performance rating matter because appellant allegedly did not include it in its claim to the CO. The Air Force’s motion is properly denominated as one to dismiss ASBCA No. 56857 in part for lack of jurisdiction. Appellant opposes the

motion. For the reasons set forth below we grant it in part and otherwise deny it.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

The IDIQ Contract

The Air Force issued the referenced negotiated Worldwide Environmental Restoration and Construction IDIQ contract to Versar on 5 December 2003 for, among other things, environmental remediation of various AFCEE customer sites (R4, tab 2, e.g., at 25-28, see tab 562 at 6872). Versar qualified as a small business awardee (supp. R4, tab 735 at 9821; see also compl., answer ¶ 4).

The IDIQ contract contains a PKV-H021, AWARDING ORDERS UNDER MULTIPLE AWARD CONTRACTS (MAR 2003) clause (PKV-H021 Awarding Orders clause), which provides in part that:

(a) *All multiple award Contractors shall be provided a fair opportunity to be considered for each order in excess of \$2,500 pursuant to the procedures established in this clause, unless [exceptions listed].*

....

(b) *[M]ultiple award Contractors will be provided a fair opportunity to be considered for each task order IAW FAR 16.505. The following procedures will be used by the [CO] to ensure fair opportunity to be considered in the placement of [TOs]. The Government will perform an analysis of factors identified below to determine the contractor that provides the best value to the Air Force.... Contractor selection will be based on an integrated assessment of all the consideration factors. The following factors will be used:*

(1) Specific technical and/or management capabilities

....

(4) Contractor performance on prior TOs

(i) Cost control

- (ii) Quality of work
- (iii) Customer satisfaction
- (iv) Compliance with law/regulation (e.g. local preference)

(R4, tab 2 at 47) (Emphasis added)

The contract incorporates by reference the Air Force Federal Acquisition Regulation Supplement 5352.216-9000, AWARDING ORDERS UNDER MULTIPLE AWARD CONTRACTS (JUN 2002)-ALTERNATE I (JUN 2002) clause (AFFARS Awarding Orders clause) (R4, tab 2 at 55), which, like Alternate II, provides in pertinent part at the basic clause:

(a) *All multiple award contractors shall be provided a fair opportunity to be considered* for each order in excess of \$2,500 pursuant to the procedures established in this clause....

(b) Unless the procedures in paragraph (a) are used for awarding individual orders, *multiple award contractors will be provided a fair opportunity to be considered for each order using the following procedures* [listed in Alternate I]. [Emphasis added]

Under Alternate I, determination of the appropriate contractor to receive each order involves “past performance on previous orders awarded under this contract.”<sup>1</sup>

The contract incorporates the Federal Acquisition Regulation (FAR) 52.216-18, ORDERING (OCT 1995) clause by reference (R4, tab 2 at 50), which provides in part at paragraph (b) that all DOs and TOs “are subject to the terms and conditions of this

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<sup>1</sup> Alternate I pertains to TO or delivery order (DO) contracts when “description, delivery, and price are pre-established such that contact with the contractors is not required.” Alternate II pertains to TO and DO contracts when the work statement is broad, the pricing less precise, and some contact with multiple awardees will be required to “ensure fair opportunity and achieve a clear meeting of the minds as to the price and scope of the order.” As with Alternate I, in making awards, the government is to consider “past performance.” In view of the negotiated contract at issue, it likely should have referred to the Alternate II version of the AFFARS Awarding Orders clause, rather than Alternate I, but the differences are immaterial to our decision.

contract.” The contract also incorporates the FAR 52.233-1, DISPUTES (JUL 2002) clause by reference (R4, tab 2 at 52), which defines “claim” at paragraph (c) as:

[A] written demand or written assertion by one of the contracting parties 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 this contract.

#### TO No. 16

On 28 April 2006 the Air Force issued TO No. 16 to Versar at the firm fixed-price of \$5,161,389 for HVAC system replacement at Pinckney Elementary School, Fort Jackson, South Carolina, which is operated by the United States Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS), a division of the Department of Defense Education Activity. The performance period ended on 3 April 2007. (R4, tab 2 at 64, 65, 67, 77, 95, tab 562 at 6873, tab 647)

On 5 July 2006 the Air Force issued Modification No. 1 to TO No. 16, which added work described as Options Nos. 2 and 4—tile floor and carpet replacement, and roof replacement, respectively—and increased the TO’s price to \$6,724,035 (R4, tab 2 at 100-02, 124). Thereafter, modifications further revised the TO’s scope of work, increased its price to \$7,023,688.16, and extended its performance period to 30 June 2008 (R4, tab 2 at 127-28 (Mod. No. 3), 132-33 (Mod. No. 5), 159-60 (Mod. No. 6), 186-87 (Mod. No. 7), 214-15 (Mod. No. 8), 216-17 (Mod. No. 9), 218-19 (Mod. No. 10), 221-22 (Mod. No. 11), 224-25 (Mod. No. 12)).

#### Disputes and Contractor’s Claim

Disputes arose during Versar’s performance of TO No. 16 over, among other things: (1) work requirements; (2) construction quality; (3) work progress; (4) labor and superintendence; (5) transfer of students to another school; (6) beneficial occupancy; (7) alleged government and contractor delays; (8) alleged defective specifications; (9) alleged contract changes; (10) alleged arbitrary and unreasonable inspection and acceptance procedures that did not comport with the specifications; (11) alleged unjustified payment withholdings; and (12) alleged inconsistent, unhelpful, arbitrary and unfair contract administration by the government (*e.g.*, R4, tabs 200, 531, 562 *et seq.*; 10/1/09 CO’s decision (ASBCA No. 56962, Bd. corr. file)).

On 7 December 2006 Versar submitted a request for equitable adjustment (REA) in the amount of \$115,593 due to an alleged controls specification error, to which it claims the Air Force did not respond (R4, tabs 200, 562 at 6876-77; *see also* compl., answer ¶ 19).

On 7 September 2007 Versar submitted a request for a change order and an unquantified REA pertaining to its installation of fan coil units following an alleged agreed procedure, and the Air Force's subsequent direction, when the project was said to be nearly 95 percent complete, that Versar de-install and re-install the units (R4, tab 400).

On 28 September 2007 the CO issued a Forbearance Notice to Versar, alleging that its failure to complete on time was a breach of its contract and TO and that, although the Air Force was allowing Versar to continue to perform, it was not relinquishing any of its contractual rights and remedies, including default procedures (supp. R4, tab 932).

On 20 June 2008, Versar notified the Air Force of its intent to submit an REA with respect to several specified items as soon as it had final cost impact information (R4, tabs 517, 562 at 6903; *see also* compl., answer ¶ 85).

On 21 August 2008 the CO issued what purported to be a final decision and a demand letter seeking \$660,721 in damages from Versar for, *inter alia*, schedule and inspection issues and allegedly not completing the project on time. Neither document included Versar's appeal rights. The CO asked for Versar's acknowledgement and its execution of a modification reducing the price of TO No. 16. (R4, tabs 531, 532) On 25 August 2008 Versar notified the CO that the purported final decision was defective for failure to comply with FAR 33.211, Versar did not acknowledge it, and Versar would shortly file a formal claim (R4, tab 533).

By letter to the CO dated 29 October 2008, Versar submitted a certified CDA claim in the amount of \$2,916,461.20, requested a final decision, and asked the Air Force to withdraw its 21 August 2008 "letter" without prejudice to its right to issue a final decision (R4, tabs 561, 562 at 6871, 6921).

In its "SUMMARY OF THE CLAIM," Versar contended:

Versar performed its work in accordance with the Contract/[TO], but has not been paid in full. *Instead, the Air Force has unjustifiably withheld amounts due to Versar, contending Versar's performance resulted in delays and other damages to the government.* In addition to not paying the full [TO] price, the Air Force, through its [CO], directed Versar to perform certain changed work – most significantly, work related to the installation of fan coil units and the installation of double the number of specified seismic restraints. The

changed work caused Versar's costs to increase and its time of performance to increase. While the Air Force modified the completion date of the [TO] (and Versar completed the work within the [TO] period of performance, as modified), the Air Force has not yet agreed to pay Versar for the extra work. *This claim seeks prompt payment to Versar of the entire [TO] price, compensation for Versar for the additional cost of performing the changed work, and rejection of the Air Force's purported claim.* [Emphasis added]

(R4, tab 562 at 6871-72)

Among many other allegations in its claim supporting its contract performance and criticizing the Air Force's actions, Versar claimed that its performance was on budget and on schedule from 1 August 2006 through 31 March 2007 and that the Air Force had not raised any concern over the percentage of completion "or express[ed] any dissatisfaction with the quality of Versar's performance" (R4, tab 562 at 6882-83).

Versar alleged that the Air Force's change of CO and CO's representative in late February and early March 2007 was responsible for project delays thereafter and that the Air Force stopped making timely payments and failed to notify it of invoice rejection. Versar further alleged that, within two months of appointment to the project, the new CO issued five cure notices concerning issues that had already been resolved or were premature to raise. (R4, tab 562 at 6884-85) Versar noted that it had responded to the cure notices and that the CO had not issued any "show cause" letters, and it alleged that the matters were considered closed (*id.* at 6887-88, *see also* R4, tabs 301-05). Versar, in effect, alleged that the Air Force's extensions of the contract performance period supported the contractor's entitlement thereto (*e.g.*, R4, tab 562 at 6898).

Versar alleged that, on 3-5 December 2007, the Air Force performed a final inspection, identifying over 800 punchlist items, and that, after the inspection, the Air Force claimed that certain seismic restraints were not properly installed, although they had not been identified as deficient on a July 2007 punchlist (R4, tab 562 at 6900, tab 609). The claim states that "Versar also learned at this time that the Air Force had applied a RED performance rating to the Project" (R4, tab 562 at 6900). The government has not disputed Versar's description of it as "a negative performance rating" (app. opp'n at 2).

Among other legal arguments in its claim, Versar alleged that the Air Force "violated its duty of good faith and fair dealing" and to cooperate; "acted with apparent intent to frustrate and delay Versar"; and evidenced "a desire to harass and frustrate Versar" (R4, tab 562 at 6911). Versar contended that the Air Force thereby unreasonably delayed project performance and caused it to incur extra costs (*id.* at 6909-12).

Versar disputed the government's assertion of damages, noting that DDESS took beneficial occupancy 26 days prior to the TO's completion date; Versar delivered the project on time within the extended performance period, and prior cure notices had been resolved (R4, tab 562 at 6914). Versar contended that "even the purported 'ascertainable damages' that the [CO] has asserted in her letter admittedly are not known to have any causal connection to Versar's performance on the Project" (*id.* at 6915).

Versar asserted that it performed its work in accordance with its contract and TO No. 16 or as otherwise directed by the Air Force, within the revised performance period, and that the Air Force's "claim" was erroneous and unsupportable (R4, tab 562 at 6918). In its Conclusion and Request for Relief," Versar asked that the CO issue a final decision that it was entitled to full payment of the TO's price, its claimed damages, any additional amounts withheld, plus Prompt Payment Act and CDA interest. Versar also sought the CO's decision that the Air Force's "claim" was invalid and unsupportable. (*Id.* at 6921)

#### Post-Claim Matters and Complaint in ASBCA No. 56857

By memorandum to Versar dated 17 November 2008, the CO stated that she had determined that it was in the government's best interest to reconsider the 21 August 2008 decision and that a decision would re-issue after further deliberation (R4, tab 650). The CO did not issue a decision on Versar's claim and it filed a deemed denial appeal on 18 June 2009, which the Board docketed as ASBCA No. 56857.

In the prayer for relief in its 24 July 2009 complaint in ASBCA No. 56857, Versar asked the Board to:

[E]nter judgment in its favor against the Respondent, in the amount of not less than \$2,839,461.40, plus applicable interest, order AFCEE to rescind its "red" rating for the Project, and order such other and further relief as the Board deems just and proper.

(Compl. ¶ 114)<sup>2</sup>

In its Rule 4 file in ASBCA No. 56857, the Air Force included a purported CO's final decision dated 20 August 2009 which found merit in part of Versar's claim, to the extent of \$709,926.42, and asserted a \$633,558.38 claim against Versar. The decision did not contain appeal rights and apparently had not been sent to Versar. (R4, tab 734 at

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<sup>2</sup> Regardless of the phrase "not less than" in the complaint's prayer for relief, the Air Force has not contended that this raises a "sum certain" jurisdictional issue under the CDA. Indeed, the claim, which was in the sum certain of \$2,916,461.20 (R4, tab 562 at 6871, 6918), not the complaint, controls. *Madison Lawrence, Inc.*, ASBCA No. 56551, 09-2 BCA ¶ 34,235 at 169,208.

9793, 9812; answer ¶¶ 123, 124) On 18 September 2009 Versar objected to the decision's inclusion in the Rule 4 file. The Board treated the objection as a protective appeal, which it docketed on 22 September 2009 as ASBCA No. 56950. On 1 October 2009 the CO issued a final decision, with appeal rights, again finding merit in Versar's claim to the extent of \$709,926.42 and asserting the government's \$633,558.38 claim (ASBCA No. 56962, Bd. corr. file, decision at 1, 20-21). On 7 October 2009 Versar filed a protective appeal from that decision, which the Board docketed as ASBCA No. 56962. The Board has consolidated the three appeals.

## DISCUSSION

### The Parties' Contentions

The Air Force contends that the Board lacks jurisdiction to consider the performance rating dispute because appellant did not include it in its claim to the CO, which did not give the CO adequate notice that it "even disagreed with the rating," let alone that it contested the negative rating and claimed entitlement to a correction (mot. at 2). The Air Force further alleges that the Board lacks jurisdiction because it has no authority to grant injunctive relief of the type appellant seeks.

Appellant replies that its position with respect to the "red" rating is unmistakable under a reasonable reading of the entire claim. It asserts that it is not asking the Board to enjoin the Air Force from conduct unrelated to the contract but instead is asking it to interpret the parties' IDIQ contract, which, in the PKV-H021 Awarding Orders clause, incorporates a requirement for completion and use of performance assessments on orders issued under the contract as part of the government's consideration of whether the contractor can obtain additional work under the contract. Thus, the Air Force was contractually obligated to complete a performance assessment in good faith that was fair and accurate, to ensure that appellant would have a fair opportunity to compete for further work under the contract. Appellant asserts that the Air Force's alleged failure to do so was both a breach of the PKV-H021 Awarding Orders clause and of the contract's implied duty of good faith and fair dealing with respect to the clause.

### The CDA and Definition of "Claim"

In relevant part, the CDA covers certain express or implied procurement contracts entered into by an executive agency. 41 U.S.C. § 602(a). Under the CDA the ASBCA has jurisdiction to decide "any appeal" from the decisions of COs in specified governmental departments or agencies "*relative to a contract* made by that department or agency (emphasis added)" and, in exercising its jurisdiction, the Board is "authorized to grant any relief that would be available to a litigant asserting a contract claim in the United States Court of Federal Claims [COFC]." 41 U.S.C. § 607(d). The CDA provides

that “[a]ll claims by a contractor against the government *relating to a contract* shall be in writing and shall be submitted to the [CO] for a decision” (emphasis added). 41 U.S.C. § 605(a). The statute does not define “claims” that are within its scope but its implementing regulations, at FAR 2.101, incorporated into the contract’s Disputes clause, define “claim” as:

[A] written demand or written assertion by one of the contracting parties 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]

### Performance Rating Issue Is Not A New Claim

Under the CDA the Board has jurisdiction over disputes based upon claims that a contractor has first submitted to the CO for decision. 41 U.S.C. §§ 605(a), 606; *Madison Lawrence*, 09-2 BCA ¶ 34,235 at 169,207. We lack jurisdiction over claims raised for the first time on appeal, in a complaint or otherwise. Whether a claim before the Board is new or essentially the same as that presented to the CO depends upon whether the claims derive from common or related operative facts. *Dawkins General Contractors & Supply, Inc.*, ASBCA No. 48535, 03-2 BCA ¶ 32,305 at 159,844 (collecting cases).

Thus we first examine whether appellant’s request for relief in its complaint regarding its “red” project rating is a new claim that it had not submitted to the CO or, rather, was contained or implicit in its 29 October 2008 CDA claim, or based upon common or related operative facts. If it is a new claim, then it is not properly part of the appeal and we do not have jurisdiction to entertain it, regardless of whether we otherwise might have jurisdiction over this performance rating dispute.

In determining the parameters of a claim, we are not limited to the claim document and can examine the totality of the circumstances. *See, e.g., Vibration and Sound Solutions Ltd.*, ASBCA No. 56240, 09-2 BCA ¶ 34,257 at 169,270. No particular wording is necessary to express it, but the CO must have “adequate notice” of the basis and amount of the claim. *See Contract Cleaning Maintenance, Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1987).

While appellant did not explicitly ask the CO in its claim to rescind its “red” performance rating, the request was implicit. Among its descriptions in its claim of various performance disputes, appellant interjected: “Versar also learned at this time that the Air Force had applied a RED performance rating to the Project” (R4, tab 562 at 6900). A reasonable reading of this statement in context suggests that appellant was not previously aware of the “red” rating and that it disputed it. Otherwise, the statement would be superfluous to appellant’s claim.

Moreover, it is clear from appellant's claim, which mentioned or included its prior correspondence and submissions, that appellant denied that its performance was deficient and that the government's purported performance-based claim, which it asked the government to withdraw, was justified. Appellant attributed performance problems and delays to the Air Force, which it also accused of violating its duties to cooperate and of good faith and of deliberately impeding appellant's performance. Thus, contrary to the government's contention, the CO was clearly on notice that appellant disagreed with the negative red performance rating.

We conclude that the performance rating matter derives from facts that are common or related to those presented or implicit in appellant's claim; the CO had adequate notice of it; and it does not constitute a new claim. Therefore, we have jurisdiction to consider it, unless the government's other contention, that we lack jurisdiction over the performance rating issue *per se*, is valid.

#### Board Has Jurisdiction To Consider Performance Rating Issue

The Board has jurisdiction to evaluate and declare the parties' rights with respect to contract clauses. *Alliant Techsystems, Inc. v. United States*, 178 F.3d 1260, 1271, *reh'g denied*, 186 F.3d 1379 (Fed. Cir. 1999). We have previously exercised jurisdiction over, and denied the government's motion to dismiss, an appeal from a contractor's claim for breach of an Awarding Orders clause in a multiple award indefinite quantity contract that, similarly to the Awarding Orders clauses in the instant contract, required that the contractor be afforded "a fair opportunity to be considered" for orders. *L-3 Communications Corp.*, ASBCA No. 54920, 06-2 BCA ¶ 33,374.

The Board recently denied the government's motion to dismiss an appeal concerning a contractor's claim under its multiple award IDIQ contract that, due to the government's erroneous and arbitrary interpretation of the contract's Small Business Administration Mentor-Protégé clause, it had improperly refused to issue TO solicitations to the contractor. We elaborated upon the basis of our jurisdiction to entertain contract interpretation claims:

The issue of the proper interpretation of the H100 clause is at the core of the parties' dispute and is not merely academic. The contract's Disputes clause provides for CDA claims seeking the adjustment or interpretation of contract terms or other relief arising under or relating to the contract. *See also* FAR 2.101, defining "claim" the same way. It is well settled that the Board has jurisdiction to entertain claims for contract interpretation. *Donald M. Lake, d/b/a Shady Cove Resort & Marina*, ASBCA No. 54422, 05-1 BCA ¶ 32,920 at 163,071-72 (collecting cases). *Moreover, a contract interpretation claim need not be limited to the*

*language of a clause in dispute but may involve a decision as to the correctness of actions taken under the contract in light of the clause and associated regulations. TRW, Inc., ASBCA Nos. 51172, 51530, 99-2 BCA ¶ 30,407 at 150,331. [Emphasis added]*

<sup>HMR</sup>*TECH2, LLC, ASBCA No. 56829, 09-2 BCA ¶ 34,287 at 169,373.*

With regard to the performance rating question at hand, in denying the government's motion to dismiss an appeal involving the government's alleged violation of an agreement to correct the contractor's overall final performance rating to "satisfactory," the Board recently concluded that, when a performance rating claim is based upon alleged contract terms and requirements, we have "jurisdiction to determine the rights and obligations of the parties" under those terms. *Sundt Construction, Inc.*, ASBCA No. 56293, 09-1 BCA ¶ 34,084 at 168,518. *See also Coast Canvas Products II Co.*, ASBCA No. 31699, 87-1 BCA ¶ 19,678 (determining contract modification embodying settlement barred CO's subsequent adverse performance rating of contractor).

In *Sundt*, the Board acknowledged our prior decisions, cited by the Air Force in this appeal, that we lack jurisdiction to decide appeals from unsatisfactory performance ratings when contract terms are not at issue. Those decisions stemmed from *Konoike Construction Co.*, ASBCA No. 40910, 91-3 BCA ¶ 24,170, where appellant did not submit a CDA claim but contended that the government's performance evaluation, standing alone, constituted a government CDA claim. The Board held that the evaluation did not fall within the Disputes clause's three categories of claims and, because there was no claim underlying the appeal, it did not have jurisdiction. That was not the case in *Sundt* and is not the case here.

The IDIQ contract at issue in this appeal contains the PKV-H021 Awarding Orders clause, which requires that appellant be afforded "a fair opportunity to be considered" for orders and sets forth evaluation criteria the CO is to use in connection with that fair opportunity, including the contractor's performance on prior TOs. The contract also incorporates by reference the AFFARS Awarding Orders clause, which calls for the same fair opportunity to be considered and evaluation of the contractor's past performance under prior TOs. As in the Board's decisions in *Sundt* and *Coast Canvas*, we conclude that appellant's performance rating claim falls under our CDA jurisdiction. The claim "relates to" appellant's contract, satisfying 41 U.S.C. §§ 605(a) and 607(d). Moreover, because it seeks the interpretation of contract terms and relief arising under or relating to the contract, it meets the definition of a CDA claim under FAR 2.101 and the contract's Disputes clause.

On the other hand, appellant's request for relief in its complaint seeks monetary damages, that the Board "order" the government "to rescind its 'red' rating for the Project," and "order such other and further relief as the Board deems just and proper." In

connection with the “other relief” sought, we can interpret the contract’s Awarding Orders clauses and assess whether the CO acted reasonably in rendering the disputed “red” performance rating or was arbitrary and capricious and abused her discretion. *See Burnside-Ott Aviation Training Center v. Dalton*, 107 F.3d 854 (Fed. Cir. 1997) (Board had CDA jurisdiction to consider contractor’s claim that government had improperly calculated award fee due based upon specified evaluation criteria in contract clause). The Board also has jurisdiction to determine whether the government breached its implied contractual duty of good faith and fair dealing inherent in every contract. *See Precision Pine & Timber, Inc. v. United States*, 596 F.3d 817 (Fed. Cir. 2010). However, we do not have jurisdiction to grant specific performance or injunctive relief. *Rig Masters, Inc.*, ASBCA No. 52891, 01-2 BCA ¶ 31,468.

Accordingly, we grant in part the government’s motion to dismiss for lack of jurisdiction to the extent that we strike the portion of appellant’s prayer for relief that asks the Board to order the government to rescind its “red” rating. We otherwise deny the motion to dismiss. The precise nature of any relief that we can grant to appellant regarding its “red” rating, if warranted, remains to be determined.

#### DECISION

We grant in part the government’s motion to dismiss and otherwise deny it.

Dated: 6 May 2010

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CHERYL L. SCOTT  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

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EUNICE W. THOMAS  
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. 56857, Appeal of Versar, Inc., rendered in conformance with the Board's Charter.

Dated:

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CATHERINE A. STANTON  
Recorder, Armed Services  
Board of Contract Appeals