



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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**THIS OPINION WAS INITIALLY ISSUED UNDER PROTECTIVE ORDER AND  
IS BEING PUBLICLY RELEASED IN ITS ENTIRETY ON JULY 30, 2024**

GRANTED IN PART: July 22, 2024

CBCA 7805

Y2FOX, INC.,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Abass Y. Bamba, Managing Director of Y2Fox, Inc., Denver, CO, appearing for Appellant.

Alexandra N. Wilson, Office of the Legal Adviser, Buildings and Acquisitions, Department of State, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **CHADWICK**, and **VOLK**.

**VOLK**, Board Judge.

The United States Department of State (DOS) contracted with Y2Fox, Inc. (Y2Fox) to design, develop, and deploy an information system for the Colombian National Police in Bogota, Colombia. Finding Y2Fox's work on the contract's first deliverable unacceptable, DOS terminated the contract for cause. Y2Fox maintains that it satisfied the contract's requirements. It challenges the termination for cause and seeks payment for contract line item number (CLIN) 001. The parties have submitted the case for a decision on the record without a hearing under Rule 19 (48 CFR 6101.19 (2023)). We find that Y2Fox failed to

satisfy the contract's requirements for the first deliverable and sustain the termination for cause. However, DOS accepted one portion of Y2Fox's work on CLIN 001, and Y2Fox is entitled to payment of \$12,142.10, plus interest, for that work.

### Background

#### The Contract

On September 30, 2021, DOS awarded a firm fixed price contract to Y2Fox for “[a]nalysis, development, testing, implementation and deployment” of an “Information System for the Selection of Human Resources,” known as “SISSET,” for the Colombian National Police. Appeal File, Exhibit 10 at 84.<sup>1</sup>

The contract contained three CLINs. Exhibit 10 at 82-83. CLIN 001 covered system design. *Id.* at 82. For that CLIN, Y2Fox had to complete a set of requirements collectively identified as “Deliverable 12.1,” and Y2Fox had to obtain approval of that deliverable from representatives of both the United States Embassy in Bogota, Colombia, and the Colombian National Police. *Id.* at 100. The description for Deliverable 12.1 in the contract's statement of work stated:

#### **SISSET design:**

This deliverable shall include at least:

- Architecture document (in Spanish) planned to develop the system. This must be presented at the beginning of the project and must include all the technological component[s] which will be implemented: application servers, database, database schemas, IP addressing, ports, connections with other data sources, balancing, WEBSERVICE and other artifacts to be incorporated into the implementation.
- Requirements gathering (analysis and validation of user requirements, needs assessment, risk identification).
- Representation of architecture.
- Database schema.
- Detailed specification of the architecture components and their relationships.
- Entity-relationship model
- Logical view of the architecture.

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<sup>1</sup> All exhibits are found in the appeal file, unless otherwise noted. The page numbers cited are the Bates numbers on the exhibits.

- Implementation view.
- View of architecture processes.
- Use cases and user stories with their respective prototypes for each of the functionalities, screens or forms of the system, in which all the actions of the system are reflected.
- Detailed document of the final design of the system.
- Monitoring and evaluation reports

*Id.* at 100-01.

The contract identified twenty-four modules that needed to be designed and developed as part of the system. Exhibit 10 at 85-95. The contract required Y2Fox to “carry out a preliminary work of verification, analysis and definition of requirements and functionalities . . . alongside the delegates of the National Police.” *Id.* at 95.

Performance of the entire contract was to be completed within twelve months after the award. Exhibit 10 at 102. As awarded, the contract provided for completion of Deliverable 12.1 by November 30, 2021, *id.* at 82, although the period of performance for that deliverable was later extended to March 31, 2022. Exhibit 56.

The contract included Federal Acquisition Regulation (FAR) 52.212-4 (48 CFR 52.212-4 (2020)), “Contract Terms and Conditions – Commercial Items (Oct 2018).” Exhibit 10 at 108. That paragraph provided:

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

*Id.* at 109.

### Contract Performance

The parties held a project kickoff meeting on November 22, 2021. Exhibit 104 at 1808. The kickoff meeting was the first opportunity for Y2Fox to gather information directly from the Colombian National Police. Exhibit 123. A few days before that meeting, Y2Fox submitted a set of “documents as summarized in deliverable 12.1” to present at the meeting. Exhibit 104 at 1808. After the meeting, Y2Fox began system development. Exhibit 11 at 115.

In a December 20, 2021, email, a representative from the U.S. Embassy in Bogota expressed concern about Y2Fox beginning system development before completing “the previous stage of verification, analysis and definition of requirements and functionalities . . . alongside the delegates of the Colombian Police.” Exhibit 11 at 114. He reminded Y2Fox that “the information system must be tailored to what the Colombian Police needs.” *Id.* In response, Y2Fox’s managing director, Dr. Abass Bamba, indicated that it was not necessary to “wait before starting the job if we have enough information.” *Id.* at 113.

In a December 22, 2021, email, the Colombian National Police requested a project schedule focused on gathering the necessary information to design the system. Exhibit 135. The email requested that dates be established for activities including, “Gathering of requirement information,” “Development of Use Cases,” “Development of flow charts,” and “Development of entity relationship model.” *Id.* at 1369.

On January 4, 2022, Y2Fox submitted an invoice requesting payment of \$121,420.99, the full value of CLIN 001. Exhibits 150 at 1490, 151. On January 7, DOS rejected the invoice on the basis that Y2Fox had not satisfied the requirements of Deliverable 12.1. Exhibit 150 at 1484. During a meeting that same day, the parties discussed the reasons for the rejection of the invoice and what Deliverable 12.1 should include. Exhibits 13, 14.

During a January 14, 2022, meeting, Y2Fox sought to present a beta version of the system’s first module. Exhibit 39 at 269. The contracting officer’s representative (COR) requested that Y2Fox not discuss its beta version, indicating that the focus should instead be on Deliverable 12.1. *Id.* At the meeting, representatives from the Colombian National Police inquired as to “how and when the information will be collected to develop the specific modules.” *Id.* at 270.

Shortly before the January 14, 2022, meeting, Y2Fox’s technical project manager drafted an email, seemingly intended for Dr. Bamba but apparently never sent, expressing disagreement with the approach Y2Fox was taking on the project and stating, in part:

[A]gain I make the same observations that I have been making for a long time, I hope that you finally understand that things on this path will never work and that we must start at the beginning by correctly collecting the information, assembling the process maps (Flow Diagrams and Use Cases) in order to be able to professionally develop the analysis and design documents . . . .

Exhibit 163; Respondent’s Initial Brief, Proposed Findings of Fact ¶ 31.

In a January 18, 2022, email to the contracting officer, Y2Fox’s Dr. Bamba stated that he was “informed during the project meeting on January 14, 2022 . . . you want to meet with me.” Exhibit 16 at 135. He asserted that Y2Fox was “in full compliance with all requirements as listed in [Deliverable] 12.1.” *Id.* Dr. Bamba attached to his email the documents that he asserted satisfied Deliverable 12.1’s requirements. *Id.* (attaching Exhibits 17–36).

In a January 19, 2022, email, a Colombian National Police representative asserted that Y2Fox’s submission did not meet the contract’s requirements for Deliverable 12.1. Exhibit 42. In his email, he expressed frustration that Y2Fox had not gathered necessary design information, stating:

Y2FOX does not know the details of the flow of information, and the flows of the processes . . . . It is worrying that two months after the start-up meeting of the project, an organized information survey focused on the entity’s requirements has not been carried out, nor has the company defined who is the official in charge of gathering said information. . . . [I]t is inconceivable that the Y2FOX company proposes a software architecture that will satisfy a need that is completely unknown.

Exhibit 42 at 283. The email went on to list a variety of elements that were missing from Y2Fox’s submission. *Id.* at 284. After this email, Y2Fox began conducting a series of interviews with representatives of the Colombian National Police regarding their requirements for each of the system’s modules. Exhibits 43–45.

On February 16, 2022, Y2Fox’s Dr. Bamba sent an email to the contracting officer demanding removal of the COR, payment for CLIN 001, and a contract modification. Exhibit 52 at 366. However, an email sent by Y2Fox personnel two days later indicated that work required for Deliverable 12.1 remained in progress. Exhibit 238 at 818 (“An architecture data flow design is getting completed . . . . We are planning to send . . . those documents next week.”); *see also* Exhibit 53 (February 24, 2022, email from Colombian

National Police stating that information gathering was completed that day and requesting that Y2Fox submit documents required by the contract for Deliverable 12.1).

In a February 24, 2022, email, the contracting officer notified Dr. Bamba that DOS was “going to modify the contract to take the period of performance through 31 March 2022 to allow for you to provide any deliverables that you have outstanding and then we will close out the contract and get your invoices paid according to the deliverables we receive.” Exhibit 54 at 376. The COR then followed up with a list of outstanding deliverables that DOS wanted Y2Fox to submit by identified dates in March 2022. *Id.* at 375. Although DOS did not prohibit Y2Fox from submitting other items, the list of deliverables that DOS asked for was not for the entire contract or even all of Deliverable 12.1. Rather, as the COR’s message indicated, it was a list of items that DOS considered outstanding to satisfy the “Requirements gathering” element of Deliverable 12.1. *Id.* Y2Fox timely submitted the listed materials, which consisted of transcriptions of audio interview files previously provided and copies of completed surveys. Exhibit 87 at 557.

On March 20, 2022, Y2Fox again submitted an invoice requesting payment for the full value of CLIN 001. Exhibit 57. DOS rejected the invoice. Exhibit 61. With only one of the twelve requirements listed for Deliverable 12.1 satisfied, DOS suggested that Y2Fox submit an invoice for ten percent of CLIN 001. *Id.* Y2Fox declined. Exhibit 62. In an April 4, 2022, email, Y2Fox’s Dr. Bamba insisted that all portions of Deliverable 12.1 had been completed and stated that Y2Fox was “sending again all the elements of 12.1.” *Id.* at 466. Later that day, Y2Fox emailed a set of document links, stating: “That will complete the full delivery for all points mentioned on 12.1 of the statement of work. Therefore, we need a full payment of the invoice that was submitted . . . .” Exhibit 294 at 1544.

### Contract Termination And Certified Claim

On April 27, 2022, DOS sent Y2Fox a show cause notice advising that DOS was considering terminating the contract for default and offering Y2Fox an opportunity to present information regarding its performance. Exhibit 66. In an April 28, 2022, response, Dr. Bamba insisted that Y2Fox had completed Deliverable 12.1 and was entitled to full payment for CLIN 001. Exhibits 71, 73.

On September 26, 2022, DOS sent Y2Fox a second show cause notice. Exhibit 94. This time DOS included an attachment detailing the deficiencies in Y2Fox’s submissions and offered Y2Fox an additional ten days to submit satisfactory documentation for Deliverable 12.1. Exhibits 95, 96. In a September 30, 2022, response, Y2Fox maintained that the documents it previously submitted satisfied all requirements for Deliverable 12.1 and declined to submit any additional documents. Exhibits 97, 98.

On April 26, 2023, Y2Fox emailed a certified claim to DOS's contracting officer seeking full payment under CLIN 001. Appellant's Response to Respondent's Initial Brief, Exhibit Y009B. On June 16, 2023, a DOS contracting officer issued a notice of termination for default, Exhibit 100, which we construe as a termination for cause under FAR 52.212-4(m).<sup>2</sup> On June 26, 2023, Y2Fox appealed to the Board. Although the notice began by stating, "Y2Fox, Inc. hereby appeals the decision of the contracting officer . . . dated on June 16, 2023," the notice of appeal made clear that Y2Fox also sought to pursue an appeal of its April 26, 2023, payment claim, which had become deemed denied under 41 U.S.C. § 7103(f)(5) (2018) by June 26, 2023.<sup>3</sup> Notice of Appeal at 1 ("The dispute concerns: The payment of the amount of \$121,420.99 for the full completion of the Siset contract deliverable 1: System Design"); *id.* at 3 ("Y2Fox on April 25, 2023, sent a certified claim requesting for payment of the tasks Section 12.1 . . . . Therefore, Y2Fox restates its demand for payment of the sum certain \$121,420.99.").

### Discussion

The parties have submitted this appeal for a decision on the record without a hearing under Rule 19.<sup>4</sup> We find that Y2Fox largely failed to satisfy the requirements of Deliverable 12.1. We therefore sustain the termination for cause. However, because DOS accepted a portion of Y2Fox's work, we grant Y2Fox's payment claim in part.

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<sup>2</sup> The contract at issue in this appeal did not contain the Default clause, FAR 52.249-8. The applicable provision in this contract was FAR 52.212-4(m), "Termination for cause." *See Master's Transportation, Inc. v. General Services Administration*, CBCA 6565, 22-1 BCA ¶ 38,001, at 184,550 (2021) ("A termination for cause is the equivalent of a termination for default.").

<sup>3</sup> Previously, within the body of a July 1, 2022, email message, the contracting officer purported to issue a final decision denying Y2Fox's payment request. Exhibit 91. However, Y2Fox had not yet submitted its certified claim as of that date.

<sup>4</sup> After briefing under Rule 19, Y2Fox also submitted two motions. First, Y2Fox moved the Board to disregard DOS's Rule 19 reply brief. That motion is denied. DOS's reply brief was submitted in accordance with the parties' jointly proposed briefing schedule, which the Board adopted. Second, Y2Fox submitted a motion for a preliminary injunction requiring DOS to pay Y2Fox the amount it seeks in this appeal in advance of the Board's resolution of the appeal. That motion is also denied. We do not have authority under the Contract Disputes Act to grant injunctive relief. *Heroes Hire LLC v. Department of Veterans Affairs*, CBCA 7195, et al., 21-1 BCA ¶ 37,940, at 184,276.

### The Termination For Cause

A termination for cause is a government claim. *Hughes Group LLC v. Department of Veterans Affairs*, CBCA 5964, 23-1 BCA ¶ 38,297, at 185,933. We review the contracting officer's decision de novo. 41 U.S.C. § 7103(e). To sustain the termination for cause, DOS must prove by a preponderance of the evidence that there existed a valid basis to terminate the contract for cause as of June 16, 2023, the date of termination. *See Empire Energy Management Systems, Inc. v. Roche*, 362 F.3d 1343, 1357 (Fed. Cir. 2004); *Hughes Group LLC*, 23-1 BCA at 185,933.<sup>5</sup> Under the contract, DOS had the right to terminate it for cause "in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance." FAR 52.212-4(m).

DOS argues that the termination was justified because Y2Fox failed to deliver the system design documentation required by Deliverable 12.1. We agree. DOS's second show cause notice and Y2Fox's response to that notice contain a detailed discussion of the parties' positions regarding Deliverable 12.1. In the attachment to that show cause notice, DOS identified both the documents that were missing and the deficiencies with documents that were submitted. Exhibit 96.

Regarding documentation missing entirely, the show cause notice asserted that no documents were submitted regarding the following requirements of Deliverable 12.1:

- Implementation View,
- Use cases and user stories with their respective prototypes for each of the functionalities,
- Detailed document of the final design of the system, and
- Monitoring and evaluation reports.

Exhibit 96 at 645. In its response, Y2Fox stated that "[a]ll those documents were provided several times," Exhibit 98 at 664, but it offered no specifics as to when they were provided, which documents included the information, or where in the documents this information was covered. In its brief before the Board, Y2Fox similarly makes blanket assertions that all required information was provided, but it neither submits supporting documentation to the Board nor directs us to any specific documentation within the appeal file submitted by DOS. Instead, Y2Fox simply relies on its own responses to the show cause notices. Appellant's

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<sup>5</sup> There is no argument in this appeal that nonperformance was excusable. Rather, Y2Fox insists that it performed in accordance with the contract terms.



Response to Respondent's Initial Brief at 4, 6. In our review of the appeal file, including the documentation Y2Fox submitted for Deliverable 12.1, e.g., Exhibits 17–36, we are unable to identify any documents that would reasonably be described as satisfying the four requirements listed above. We therefore find that Y2Fox failed to satisfy those requirements of Deliverable 12.1.

Moreover, we agree with DOS that the design documents Y2Fox did submit were often unacceptable. For example, DOS consistently found that proposed forms submitted by Y2Fox had not been tailored to the needs of the Colombian National Police. For several forms, the attachment to DOS's second show cause notice explained:

The form shown by the Contractor is not based on any Design accepted by the US Embassy nor by the CNP [Colombian National Police]. The Design Phase is required to form any User Interface. The form does not have the user interface style, colors, and logo authorized by the National Police as [a] Colombian Government Organization.

Exhibit 96 at 642. In response, Y2Fox asserted that these elements of the user interface should be considered part of the subsequent software development phase, not the design phase. Exhibit 98 at 653. Y2Fox did not identify any contract provision to support that position, and its reasoning is not persuasive. Y2Fox asserted that the "user interface graphical design . . . require[s] coding in software languages such as JavaScript, CSS, [and] HTML." *Id.* But the purpose of the design deliverable was to document, and obtain approval for, what was to be coded in the subsequent phase of contract performance.

Another example of Y2Fox's failure to deliver adequate design documentation concerns a Y2Fox document with the filename "Project\_TopologySpanish.pdf." This document was the primary narrative design document that Y2Fox submitted. It contained a general discussion of various software architecture approaches, along with a section titled "Our approach." Exhibit 106 (English translation of document). However, as Y2Fox acknowledged, it prepared this document in advance of the parties' project kickoff meeting. Exhibit 98 at 661-62. Thus, it was not a submission that effectively documented the results of the information later gathered from the Colombian National Police regarding the specific needs of the end user for each module. As the show cause notice attachment explained, the generic information presented in this document did not reflect an appropriate plan to "implement the Colombian National Police procedures, information flow, and processes." Exhibit 96 at 644. According to Y2Fox, the reviewers from DOS and the Colombian National Police overlooked the second part of the document, titled "Our approach." Exhibit 98 at 661. However, the evidence in this appeal establishes that the reviewers considered and commented on that section, which lacked the specificity and detail necessary

to satisfy the contract's requirements. Exhibit 42 at 283. Like the remainder of the document, Y2Fox's "Our approach" section was written at a time when it did "not know the details of the flow of information" that the software system needed to accommodate. *Id.*

Y2Fox failed to produce the design documentation required by Deliverable 12.1. The contractual period for completing that deliverable expired more than a year before the June 16, 2023, termination. Y2Fox's failure to complete Deliverable 12.1 was an appropriate basis for DOS to terminate the contract for cause under FAR 52.212-4(m).

In addition to arguing that it satisfied the requirements of Deliverable 12.1, Y2Fox also argues that DOS acted in bad faith. We find no support for those allegations. To prove governmental bad faith, Y2Fox must present clear and convincing evidence that DOS personnel acted with the specific intent to injure Y2Fox. *Road & Highway Builders, LLC v. United States*, 702 F.3d 1365, 1369 (Fed. Cir. 2012). In its brief, Y2Fox accuses DOS of acting in bad faith in various ways, such as by allegedly ignoring the contract modification extending the performance period for CLIN 001, by not responding to emails, and even by the citation of certain cases in the brief that DOS submitted to the Board. These allegations are not supported by any persuasive evidence, and they are also not of a nature that would meet the standard for demonstrating governmental bad faith. Y2Fox does not identify any evidence of DOS personnel acting with the intent to injure Y2Fox.

Y2Fox failed to comply with the contract terms regarding Deliverable 12.1. We sustain the termination for cause.

#### Y2Fox's Payment Claim

Notwithstanding the termination for cause, Y2Fox is entitled to payment for any work that DOS accepted. See FAR 52.212-4(i)(1), (m); *Decker & Co. v. West*, 76 F.3d 1573, 1582 (Fed. Cir. 1996); *BES Design/Build, LLC v. Department of Veterans Affairs*, CBCA 6453, et al., 23-1 BCA ¶ 38,319, at 186,080. To recover on its payment claim, Y2Fox has the burden to prove entitlement and quantum. See *Systems Integration & Management, Inc. v. General Services Administration*, CBCA 1512, et al., 13-1 BCA ¶ 35,417, at 173,765.

Y2Fox seeks payment for the entirety of CLIN 001.<sup>6</sup> As discussed above, Y2Fox largely failed to satisfy the requirements of Deliverable 12.1, which corresponds to CLIN 001. Therefore, Y2Fox is not entitled to full payment for CLIN 001.

However, Y2Fox is entitled to payment for completing one element of Deliverable 12.1. DOS acknowledges that Y2Fox ultimately completed the “requirements gathering” element of Deliverable 12.1 in compliance with contract requirements. Respondent’s Initial Brief at 46. Partial payment on CLIN 001 is warranted under the facts of this case. Upon concluding that Y2Fox would not be able to complete the contract, DOS nonetheless requested that Y2Fox submit specific materials relating to the “requirements gathering” element of Deliverable 12.1. Exhibit 54 at 375. It also advised Y2Fox that its invoice would be paid based on what was submitted. *Id.* at 376. Y2Fox timely delivered the requested materials, and they were accepted in satisfaction of this element of Deliverable 12.1 by DOS. Exhibit 87 at 557. Therefore, payment must be made for the “requirements gathering” element of Deliverable 12.1.

As for quantum, DOS viewed completion of this single element of Deliverable 12.1 as warranting payment of ten percent of the deliverable, i.e., \$12,142.10. Respondent’s Initial Brief, Proposed Findings of Fact ¶ 62. No payment was ever made to Y2Fox, which continues to assert entitlement to full payment under CLIN 001 and does not present any alternative argument in favor of any partial payment. We adopt DOS’s quantification. Considering that this was one of twelve elements for Deliverable 12.1 and that there is little to no evidence that Y2Fox’s success in completing “requirements gathering” is of significant value by itself, we find that ten percent of the value of CLIN 001 is an appropriate allocation for completing that single element. DOS shall pay Y2Fox \$12,142.10, plus interest in accordance with 41 U.S.C. § 7109.

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<sup>6</sup> Y2Fox also seeks to recover additional compensation for profit, but the CLIN amounts stated in the contract already account for profit, to the extent that Y2Fox included profit in its bid for this fixed-price contract. *See* FAR 49.402-2(c) (providing for payment at the contract price for accepted work when a contract is terminated for default).

Decision

The appeal is **GRANTED IN PART**. DOS shall pay Y2Fox \$12,142.10, plus interest in accordance with 41 U.S.C. § 7109. The appeal is denied in all other respects.

*Daniel B. Volk*

DANIEL B. VOLK  
Board Judge

We concur:

*Erica S. Beardsley*

ERICA S. BEARDSLEY  
Board Judge

*Kyle Chadwick*

KYLE CHADWICK  
Board Judge