

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**BAHRAIN MARITIME & MERCANTILE
INTERNATIONAL B.S.C. Dba BMMI,**

Plaintiff,

v.

THE UNITED STATES,

Defendant.

**No. 09-739 C
(Judge Merow)**

DEFENDANT' S ANSWER AND COUNTERCLAIM

For its answer to the Complaint on a Claim Under an Express Contract (“complaint”) of plaintiff Bahrain Maritime & Mercantile International B.S.C. (“BMMI”), defendant the United States hereby admits, denies, and alleges as follows:

1. The allegations contained in paragraph 1 are plaintiff’s characterization of its case, to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

2. The allegations contained in paragraph 2 are plaintiff’s characterization of its case, to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

3. The allegations contained in paragraph 3 are plaintiff’s characterization of its case, to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

4. Denies the allegations contained in paragraph 4 for lack of knowledge or information sufficient to form a belief as to their truth.

5. Admits the allegations contained in the first clause of the first sentence of paragraph 5 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations. The allegation contained in the second clause of the first sentence of paragraph 5 constitutes a conclusion of law to which no answer is required; to the extent it may be deemed an allegation of fact, it is denied. Admits the allegations contained in the second sentence of paragraph 5 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

6. Admits the allegations contained in paragraph 6 to the extent supported by the contract, which is the best evidence of its contents; otherwise denies the allegations.

7. The allegation contained in the first, second, third, fourth and fifth sentences of paragraph 7 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied. The allegations contained in the sixth sentence of paragraph 7 are plaintiff's characterization of its case, to which no answer is required; to the extent they may be deemed allegations of fact, they are denied. Defendant avers that the "United States" is the sole defendant in this case.

8. The allegations contained in paragraph 8 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

9. The allegations contained in the first sentence of paragraph 9 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied. Denies the allegations contained in the second sentence of paragraph 9 for lack of knowledge or information sufficient to form a belief as to their truth. The allegations contained in the third sentence of paragraph 9 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

10. Admits the allegations contained in paragraph 10 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

11. Admits the allegations contained in paragraph 11 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

12. Admits the allegations contained in paragraph 12 to the extent supported by the contract, which is the best evidence of its contents; otherwise denies the allegations.

13. Admits the allegations contained in paragraph 13 to the extent supported by the contract, which is the best evidence of its contents; otherwise denies the allegations.

14. Admits the allegations contained in paragraph 14 to the extent supported by the document(s) cited, which is the best evidence of their contents; otherwise denies the allegations.

15. The allegations contained in the first, second, and fourth sentences of paragraph 15 are denied. The allegations contained in the third sentence of paragraph 15 constitute conclusions of law to which no answer is required; to the extent they may be deemed an allegation of fact, they are denied.

16. Denies.

17. Admits the allegations contained in paragraph 17 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

18. Admits the allegations contained in the first sentence of paragraph 18 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations. The allegations contained in the second sentence of paragraph 18 are conclusions of law to which no answer is required; to the extent that they may be deemed allegations of fact, they are denied. Admits the allegation contained in the third sentence of paragraph 18 that DLA Contracting Officer proposed to lower BMMI's performance based distribution fees by five

percent for a succeeding period of six months. Denies the remaining allegations contained in the third sentence of paragraph 18.

19. Denies.

20. Admits the allegations contained in the first, second, third, fourth, and fifth sentences of paragraph 20 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations. The allegations contained in the sixth sentence of paragraph 20 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

21. Admits the allegation contained in the first sentence of paragraph 21 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations. The allegations contained in the second and third sentences of paragraph 21 are denied.

22. Admits the allegation contained in the first sentence of paragraph 22 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations. The allegations contained in the second sentence of paragraph 22 are denied. The allegations contained in the third sentence of paragraph 22 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

Admits the allegation contained in the fourth sentence of paragraph 22 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

The fifth and sixth sentences of paragraph 22 are denied. Admits the allegations contained in the seventh sentence of paragraph 22 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

23. Admits.

24. Denies.

25. Admits the allegation contained in paragraph 25 that the version of Modification P00023 that was proposed on November 8, 2007 was never signed and that BMMI had objected to it. The remaining allegations in paragraph 25 are denied.

26. Admits the allegation contained in paragraph 26 that representatives from BMMI met at DSCP in early 2008 to explain BMMI's dispute with the five percent reduction in Performance-Based Distribution Fees. The remaining allegations in paragraph 26 are denied.

27. Admits the allegations contained in paragraph 27 to the extent supported by the documents cited, which is the best evidence of their contents; otherwise denies the allegations.

28. Denies.

29. Admits the allegations contained in paragraph 29 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

30. Admits the allegations contained in paragraph 30 to the extent supported by the documents cited, which is the best evidence of their contents; otherwise denies the allegations.

31. Admits the allegations contained in paragraph 31 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

32. Admits the allegations contained in paragraph 32 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

33. Admits that on December 11, 2008, Robert Smith, BMMI's COO for Contract Services & Supply, wrote an electronic mail message addressed to DSCP Contracting Officer Tina Frederico. The remaining allegations in paragraph 33 are denied.

34. Admits the allegations contained in paragraph 34 to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

35. Defendant's responses to paragraphs 1 through 34 of the complaint are incorporated by reference.

36. The allegations contained in paragraph 36 constitute conclusions of law to which no answer is required; to the extent they may be deemed an allegation of fact, they are denied.

37. Defendant's responses to paragraphs 1 through 36 of the complaint are incorporated by reference.

38. The allegations contained in paragraph 38 constitute conclusions of law to which no answer is required; to the extent they may be deemed an allegation of fact, they are denied.

39. Defendant's responses to paragraphs 1 through 38 of the complaint are incorporated by reference.

40. The allegations contained in paragraph 40 constitute conclusions of law to which no answer is required; to the extent they may be deemed an allegation of fact, they are denied.

41. Defendant denies that plaintiff is entitled to the relief set forth in the Prayer for Relief immediately following paragraph 40, or to any relief whatsoever.

42. Defendant denies each and every allegation not previously admitted or otherwise qualified.

DEFENDANT'S COUNTERCLAIM

43. This Court has jurisdiction over this counterclaim pursuant to 28 U.S.C. §§ 1503 and 2508 and 41 U.S.C. § 609.

44. Pursuant to BMMI's contract with the Government, Contract SPM300-08-D-3131, BMMI received a negative Contractor Performance Assessment Reporting System ("CPARS") rating for the time period March 2006 to December 2006. That negative rating

resulted in BMMI owing the Government a five-percent reduction in its Performance Based Distribution Fee (“PBDF”) based upon the PBDF language in the contract.

45. The Government calculated a penalty amount that represented the effect that a five-percent PBDF reduction would have had on BMMI’s PBDF for a prorated six-month portion of the March 2006 to December 2006 time period. Despite demanding payment, BMMI refused to pay the penalty.

46. On September 18, 2009, the contracting officer issued a demand notice to BMMI directing BMMI to reimburse the Government \$273,559.75 based upon the negative CPARS rating for the March 2006 to December 2006 time period and the PBDF language in the contract. The demand notice constitutes a claim pursuant to Federal Acquisition Regulation Sections 2.101 and 33.206 as it is a written contracting officer’s final decision.

47. BMMI did not pay the \$273,559.75 demanded by the contracting officer’s final decision within thirty days of the contracting officer’s claim letter and, thus, interest did and continues to accrue on the unpaid portion of the principal as provided in Federal Acquisition Regulation 32.610, at the rate established by the Secretary of the Treasury under Public Law 92-41.

48. BMMI remains indebted to the government in the amount of \$273,559.75 plus interest.

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PRAYER FOR RELIEF

WHEREFORE, defendant requests that this Court enter judgment against BMMI and in favor of defendant in the amount of \$273,559.75 plus interest, order that BMMI's complaint be dismissed, and grant defendant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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Assistant Attorney General

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Director

/s/ Franklin E. White, Jr.
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June 15, 2010

Attorneys for Defendant

CERTIFICATE OF FILING

I hereby certify that on this 15th day of June, 2010, a copy of the foregoing “DEFENDANT’S ANSWER AND COUNTERCLAIM” was filed electronically. I understand that notice of this filing will be sent to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

/s/ Russell J. Upton
RUSSELL J. UPTON