



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 9, 2016

CBCA 2878

JANE MOBLEY ASSOCIATES, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Ralph C. Thomas III of Baker, Cronogue, Tolle & Werfel, LLP, McLean, VA, counsel for Appellant.

Catherine Crow and John S. Tobey, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **SHERIDAN**, and **KULLBERG**.

SHERIDAN, Board Judge.

Jane Mobley Associates, Inc. (JMA) appeals the contracting officer's final decision finding that the General Services Administration (GSA or Government) overpaid JMA under a firm-fixed-price task order and that, as a result, JMA is indebted to the Government in the amount of \$37,235.60 for JMA's alleged overbilling. For the reasons that follow, we deny the appeal.

Statement of Facts

I. Award and Performance of the Contract

A. The Schedule Contract

On May 14, 2004, in response to GSA's solicitation for general marketing, media, and public information services, JMA was awarded Federal Supply Schedule contract GS-23F-0354P (schedule contract). The purpose of the solicitation was to procure media and marketing services in order to meet GSA's needs for such services, which could not be satisfied in-house.

The schedule contract contemplated that the Government would issue task orders to JMA to provide services from the schedule contract's statement of work. In this regard, the schedule contract provided:

A firm fixed price order shall be requested, unless the ordering office makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work or to anticipate cost with any reasonable degree of confidence. When such a determination is made, a labor hour or time-and-materials proposal may be requested. The firm-fixed price shall be based on the prices in the schedule contract and shall consider the mix of labor categories and level of effort required to perform the services described in the statement of work.

Exhibit 45 at 85. JMA would then be paid in accordance with the applicable rates listed in JMA's schedule price list, which included overhead and profit. Regarding payment, JMA offered a prompt payment discount of 0.5% for payments made within fifteen days from the date of the invoice. In any event, payment for services was due within thirty days of receipt of a proper invoice.

JMA's schedule contract incorporated by reference the terms of the original solicitation. Among the terms incorporated, several provisions of Federal Acquisition Regulation (FAR) 52.212-4, 48 CFR 52.212-4 (2003) are pertinent to this appeal:

(g)(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. *An invoice must include—*

....

(vi) Terms of any discount for prompt payment offered[.] (Emphasis added.)

....

(g)(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

....

(i) Payment. . . . In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

The schedule contract was updated at various times (called a “refresh”), which modified some, but not all, of the terms and conditions of the original schedule contract. Refresh eight, issued on January 5, 2010, added the following clause to the schedule contract:

(1)(ii)(D)(5) *Overpayments/Underpayments*. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments.

B. The Task Order

In late 2009 and early 2010 concerns arose regarding environmental contamination at the GSA-controlled Bannister Federal Complex (Bannister Complex) in Kansas City, Missouri. The matter developed into a crisis in which GSA officials believed they needed communications consultant services support to develop immediate responses to public concerns as they were arising. On February 5, 2010, GSA awarded to JMA task order GS-P-06-10-GX-0012 (task order) under the aforementioned schedule contract. Pursuant to the task order, JMA was to provide communications consultant services necessary to support GSA in developing responses to the crisis.

The task order was originally awarded as firm-fixed-price in the amount of \$99,940.25 for a base period running from February 5 to March 8, 2010 (base period). The statement of

work for this period, developed by JMA's principal, Dr. Jane Mobley, called for the provision of technical support, materials, equipment, and supplies to support GSA's response and included specific tasks for addressing the crisis in phases.

The task order incorporated by reference several provisions contained in the schedule contract that are relevant to this appeal:

52.232-1 Payments (Apr. 1984) The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract.

52.232-8 Discounts for Prompt Payment (Apr. 1989): [A]ny offered discount will form part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contract may include prompt payment discounts on individual invoices.

52.232-25(a)(4) Prompt Payment: A proper invoice *must include* the items listed in . . . (i) through . . . (viii) If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office.

. . . .

(v) Shipping and payment terms (e.g., shipment number and date of shipment, *discount for prompt payment terms*). (Emphasis added.)

After performing as required by the task order, JMA invoiced GSA for payment of the firm-fixed amount of \$99,940.25, based on 814.25 hours of work.¹ No prompt payment discount terms appeared on either invoice. GSA paid JMA the full \$99,940.25 obligated for the task order.

¹ JMA, in fact, issued two invoices covering services performed during the base period, 204 and 204R, the latter of which corrected the omission of "Inc." from the name of the contractor in the former. This was done to assist GSA's payments branch in making payment to the correct vendor.

C. The Task Order Modification

While work under the task order was still being performed, GSA officials discussed whether to purchase additional services from JMA, as GSA believed it was not yet fully equipped to handle the Bannister Complex crisis in-house. However, GSA was uncertain whether JMA's services would be required for the entire forthcoming period. After further internal discussions, the contracting officer (CO), Ms. Crystal Martin, was told by her supervisor, Mr. Courtney Springer, to collaborate with GSA program personnel to develop a new statement of work in order to continue JMA's services in preparing GSA to handle the crisis itself. By e-mail message dated March 4, 2010, the CO informed JMA that GSA wished to modify the task order to extend JMA's services for an additional two months and included a suggested statement of work for that period. Later that same day, JMA responded that the suggested statement of work was "very broad" and that JMA would need to redraft the statement of work "in order to price it appropriately." By e-mail message later that evening, JMA submitted its draft statement of work to GSA and included an estimated cost for the period, stating:

Please find enclosed the SOW [statement of work] that we think covers the work foreseen in the next two months for JMA to support the communications efforts . . . concerning the Bannister Complex[.] As requested, we are providing a cost for each of two months, based on the LOE [level of effort] expended in [February] 2010 and anticipated requirements. We project that March will require the LOE (hours and personnel) that equals \$76,800 under our GSA schedule rates and April LOE that equals \$57,600.

In the days following, the parties continued to discuss pricing and terms of the new statement of work under the proposed modification. On the morning of March 8, 2010, CO Martin sent to Dr. Mobley for her review and signature a copy of the draft task order modification. The draft modification extended JMA's services from March 9 to May 10, 2010, (modification period) and increased the amount of funds obligated for the task order by \$134,400, to \$234,340.25.

Mr. Springer, however, continued to have doubts concerning how long JMA's services would actually be required. He was concerned that GSA would not need JMA's services through May and whether GSA would end up paying for more services than it needed. Accordingly, Mr. Springer directed CO Martin to include in the modification additional language whereby JMA would be required to track its hours worked and GSA would pay on the basis of the hours billed. Billing in this manner, GSA believed, would allow JMA to be adequately compensated for the work it performed in the event GSA wished to terminate JMA's services earlier than May 10, 2010.

Based on conversations with Mr. Springer, CO Martin contacted Ms. Kelly Reinhardt, Senior Principal of JMA, and informed her to disregard the earlier sent draft modification. In follow-up to this conversation, CO Martin notified Dr. Mobley by e-mail message to disregard the earlier sent modification. On the afternoon of March 8, 2010, CO Martin forwarded to Dr. Mobley a copy of the revised modification. In the revised modification, CO Martin added new payment language that provided:

4. Jane Mobley shall provide documentation upon invoicing showing the hours invoiced for during that monthly period. Jane Mobley will be paid based on the hours documented and verified for each labor category and task during that month. Monthly payment shall not exceed documented hours. If at any time services are no longer needed the Government reserves the right to cancel services and reimburse Jane Mobley for any direct labor costs incurred prior to cancellation. Any over-committed funds shall be de-obligated from the task order.
5. All other terms and conditions remain unchanged.

Shortly after receiving CO Martin's e-mail message, Dr. Mobley contacted CO Martin by phone to discuss the new payment terms. In that conversation, CO Martin explained to Dr. Mobley that, under the new terms, JMA would be paid based on the hours worked and invoiced during the modification period. When asked by Dr. Mobley whether "the contract was still firm-fixed price . . . [CO Martin] stated yes, it was." CO Martin, however, did not explain why, despite the new payment terms, she believed the contract remained firm-fixed-price. Nevertheless, Dr. Mobley did not raise any objections to the added language and returned the executed final version of the modification to CO Martin. The task order modification was fully executed on March 8, 2010, as modification PS 01.

D. Billing, Payment, and Closeout of the Task Order

JMA continued providing services as required by the task order modification. In light of the modification, Mr. Jerry Mucke, JMA's finance director, notified employees that JMA would begin to track their hours spent on the project. Accordingly, JMA's employees recorded their hours and submitted them to Mr. Mucke, who then invoiced GSA in an amount commensurate with the total hours reported multiplied by the applicable labor rates. While Mr. Mucke received some employees' records as hard copy timesheets, employees generally submitted their time via e-mail. Each employee's time spent on the project was then entered into the company's MAS 90 billing system by the number of hours worked, labor category, and task for which the work was performed. The system then produced a summary of the hours, from which Mr. Mucke prepared an invoice. However, due to

limitations in JMA's MAS 90 software, Mr. Mucke had to edit the software's calculations. The MAS 90 software could only produce a billing summary by calendar month. The system could not produce a summary that corresponded to the periods of performance under the modification, which did not begin or end on the first and last days of the month. As a result of the overlap of the calendar month and the modification billing periods, the total hours reported in a particular invoice included hours worked in a prior billing period.² This method of billing was unlike the manner by which JMA billed during the firm-fixed-price base period, where JMA submitted an invoice that reflected the original lump sum price awarded and that provided no breakout of hours worked.

On April 10, 2010, JMA submitted invoice 306 for the first month of services performed under the modification. It totaled \$74,635.25 for the period March 8 to April 8, 2010. The invoice showed a breakout under each task and a total of 620.25 hours charged at applicable rates. Prior to payment, GSA verified the reported hours worked against the labor rates and noted a discrepancy between the amount JMA billed and the amount GSA had calculated. Mr. Mucke noted his error and provided a revised invoice (306R) reflecting the new invoiced amount of \$74,623.87.

On May 15, 2010, JMA submitted to GSA for payment invoice 405, which covered the period from April 9 to May 10, 2010. As with invoice 306R, invoice 405 provided a breakout by category of the 451 hours charged at the applicable rates, which totaled \$59,773.96. GSA verified and approved this amount, and JMA was paid in full.

Upon contract completion, the task order was closed out on May 10, 2010, in a formal contract closeout meeting. In its final contractor performance assessment report, GSA rated JMA's services as "Excellent" in each of four key areas. In total, GSA paid JMA \$234,338.08, under the task order and modification, \$2.17 less than the total amount obligated. JMA did not express concerns about receiving the lesser amount.

² Dr. Mobley conceded that, in retrospect, JMA's record-keeping was not fully reliable. Dr. Mobley stated, "Looking back at it, would you say it was reliable [in] auditable terms? I would not. If asked today to judge the way that we kept those records internally, would it be judged by business standards as sloppy? Well, I think that [is] a pretty fair word."

II. Audit by the GSA Office of Inspector General

JMA's schedule contract contained General Services Acquisition Regulation (GSAR) 552.215-71, which establishes broad rights for the contracting officer or an authorized representative such as GSA's Office of Inspector General (OIG) to examine books, documents, papers, and other pertinent records to verify pricing, sales, and other data. 48 CFR 552.215-71. GSA can reach back up to three years after final payment on the contract to perform these audits. Some time after contract completion, GSA's OIG conducted an audit concerning the award and administration of the JMA task order and the modification. In its subsequent report, issued on January 10, 2012, the OIG concluded that JMA had overbilled GSA for various labor costs in an amount totaling \$40,105.69. Based on JMA's invoices, timesheets, and supporting documentation, the OIG found JMA's overbilling included \$23,941.92 for labor costs billed under invoice 306R and \$16,163.77 for labor costs billed under invoice 405R. As to invoice 306R, the OIG determined that of the 620.25 hours reported, only 345.5 hours were supported by JMA's time records. The OIG determined that of the 451 hours reported in invoice 405R, only 358.25 hours were supported by JMA's time records. In a memorandum prepared in connection with the audit, the OIG detailed an interview it conducted with Mr. Mucke, in which Mr. Mucke explained the reason for the overbilling:

JMA's explanation for the overbilling was that its actual costs during the initial invoice period (February 5 - March 8) were \$126,636.29, which exceeded the firm-fixed-price amount by \$26,696.04. JMA stated that it carried these excess labor costs over from the initial firm-fixed-price period to the extension period (its second and third invoices).

The OIG further determined that JMA was indebted to GSA in the amount of \$971.16 for its failure to include the required 0.5% prompt payment discount terms on its invoices. The OIG adjusted the amount of indebtedness downward by \$8,241.08 to reflect certain subcontractor costs it concluded were owed by JMA "to ensure that [the OIG's] refund calculation was not overstated." The OIG recommended that GSA take steps to recoup \$32,835.77 in overbilled amounts.

III. GSA's Demand Letter and Contracting Officer's Final Decision

On January 9, 2012, CO Martin issued to JMA a notice of demand for the recovery of the alleged overpayments in the amount of \$32,835.77. The letter indicated that if JMA decided to dispute the assessment, it could do so in writing within thirty days of the date of the notice. By letter dated January 23, 2012, JMA refuted the OIG's reported findings and asserted that no overpayment occurred on the task order. JMA argued that the task order

was contracted at a firm-fixed-price, successfully closed out, and completed with a rating of “Excellent” in GSA’s contractor performance assessment report; that each party fulfilled its obligations under the contract; that labor rates and labor hours were not germane to payment under the firm-fixed-price contract; and that the language regarding the tracking of labor hours contained in the “Description” section of the task order modification was meaningless and irrelevant as the contracting officer had assured JMA that the language would not alter the firm-fixed-price nature of the contract. Further, JMA argued that it was not required to offer a prompt payment discount on its invoices, as the task order incorporated the prompt payment discount terms by reference. JMA asserted that GSA could have withheld the discount at its discretion when making timely payment to the contractor, but it elected not to do so. Accordingly, JMA concluded, it was not indebted to GSA for any of the \$32,835.77 demanded.

CO Martin performed her own analysis regarding the overbilling using the timesheets JMA provided.³ As to invoice 306R, of the 620.25 hours reported, CO Martin determined that 355.25 hours were supported by JMA’s timesheets, reflecting an overbilling of 265 hours. As to invoice 405R, JMA reported a total of 451 hours worked, but CO Martin determined that only 335 hours were supported by JMA’s timesheets, reflecting an overbilling of 116 hours.

On June 1, 2012, CO Martin issued a contracting officer’s final decision on GSA’s overpayment concluding that JMA overbilled GSA by \$21,981.85 under invoice 306R and by \$14,263.29 under invoice 405R. The CO determined that JMA also owed \$990.46 in prompt payment discounts, and was not entitled to an adjustment for subcontractor costs. The decision addressed JMA’s arguments against overpayment and determined that the arguments against overpayment were without merit. GSA concluded JMA was indebted to the United States in the total amount of \$37,235.60.

³ The OIG received two sets of timesheets from JMA, one submitted on November 17, 2010, in response to a subpoena, and another submitted on October 14, 2011, in response to an informal OIG request. The hours reflected in one set of timesheets generally matched those reflected in the other. Where a discrepancy existed between the two sets, the CO used the hours as reported on the timesheets provided under the OIG subpoena. The CO considered those timesheets to be more reliable for resolving discrepancies because those timesheets were created closer to the time the work was performed and they were submitted under subpoena.

JMA timely appealed the final decision to the Board, where the case was docketed as CBCA 2878. We have jurisdiction to decide this matter pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012).

Discussion

The central issue in this appeal involves a question of contract interpretation. The dispute before us is whether JMA is entitled to be paid a firm-fixed-price for the services it provided during the two-month period covered by the task order modification, or whether it is only entitled to be paid based on the applicable rates and hours worked during that period. In resolving such a dispute, we turn to the “time-honored rules” of contract interpretation:

The starting point for contract interpretation is the language of the written agreement. *NVT Technologies, Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004). In interpreting the language of a contract, reasonable meaning must be given all parts of the agreement so as to not render any portion meaningless, or to interpret any provision so as to create a conflict with other provisions of the contract. *Hercules, Inc. v. United States*, 292 F.3d 1378, 1380-81 (Fed. Cir. 2002); *Fortec Constructors v. United States*, 760 F.2d 1288, 1292 (Fed. Cir. 1985); *United States v. Johnson Controls, Inc.*, 713 F.2d 1541, 1555 (Fed. Cir. 1983). The nature of the contract is determined by an objective reading of its language, not by one party’s characterization of the instrument. *Varilease Technology Group, Inc. v. United States*, 289 F.3d 795, 799 (Fed. Cir. 2002); *Travel Centre v. Barram*, 236 F.3d 1316, 1319 (Fed. Cir. 2001); *Greenlee Construction, Inc. v. General Services Administration*, CBCA 416, 07-1 BCA ¶ 33,514, at 166,061.

Champion Business Services v. General Services Administration, CBCA 1735, et al., 10-2 BCA ¶ 34,539, at 170,345, *modified on reconsideration*, 10-2 BCA ¶ 34,598.

“The primary objective of contract interpretation is to determine the intent of the parties at the time an agreement is created.” *600 Second Street Holdings LLC v. Securities and Exchange Commission*, CBCA 3228, 13 BCA ¶ 35,396, at 173,666 (citing *Alvin, Ltd. v. United States Postal Service*, 816 F.2d 1562, 1565 (Fed. Cir. 1987); *Glidersleeve Electric, Inc. v. General Services Administration*, GSBCA 16404, 06-2 BCA ¶ 33,320). “The language of the agreement ‘must be given that meaning that would be derived from the contract by a reasonably intelligent person acquainted with the contemporaneous circumstances.’” *Id.* at 173,666 (quoting *Hol-Gar Manufacturing Corp. v. United States*, 351 F.2d 972, 975 (Ct. Cl. 1965)). An interpretation which gives a reasonable meaning to all

parts of an instrument will be preferred to one which leaves a portion of it useless, inexplicable, inoperative, void insignificant, meaningless or superfluous; nor should any provision be construed as being in conflict with another unless no other reasonable interpretation is possible. *Hol-Gar*, 351 F.2d at 979. Moreover, the conduct of the parties prior to the dispute is especially strong evidence of the contract's true meaning. See *Blinderman Construction Co., Inc. v. United States*, 695 F.2d 552, 558 (Fed. Cir. 1982) ("It is a familiar principle of contract law that the parties' contemporaneous construction of an agreement, before it has become the subject of a dispute, is entitled to great weight in its interpretation." (citation omitted)). Applying these principles to the schedule contract, task order, and task order modification, JMA's interpretation must be rejected.

JMA contends that the addition of the payment terms in the task order modification did not alter the firm-fixed-price nature of the task order that covered the modification period. However, the plain language of the modification, "[JMA] will be paid based on the hours documented and verified for each labor category and task during that month," makes clear that during the modification period, JMA would no longer be paid a firm-fixed-price for its services. The task order modification was a bilateral modification and represents the intent of the parties. "In the realm of Government contracts, absent mistake or duress not present here, few things signify knowing and intentional conduct more than does the execution of a bilateral modification." *Eslin Co.*, ASBCA 34029, 87-2 BCA ¶ 19,854, at 100,454 (quoting *USD Technologies, Inc.*, ASBCA 31305, 87-2 BCA ¶ 19,680).⁴ Pursuant to the terms of the modification, JMA agreed to be paid monthly in an amount not to exceed the number of hours it documented, which were verified by GSA for that period.⁵

While the language of the task order modification itself is important, it is also construed in the context of JMA's underlying schedule contract. See *Champion*, 10-2 at 170,345 (noting a task order may not be "construed in a vacuum"). The schedule contract provided that task orders would be issued as firm-fixed-price, "unless the ordering office

⁴ See also *Corners & Edges, Inc. v. Department of Health & Human Services*, CBCA 693, et al., 08-2 BCA ¶ 33,961, at 168,021 (a bilateral modification repricing work bars a claim of breach or equitable adjustment arising from the modification (citing *Cygnus Corp. Inc. v. United States*, 63 Fed. Cl. 150, 156 (2004), *aff'd*, 177 F. App'x 186 (Fed. Cir. 2006)).

⁵ Further, the task order modification provided, "Any over-committed funds shall be de-obligated from the task order." Such language is inconsistent with the nature of a firm-fixed-priced instrument. "A firm-fixed-price contract provides for a price that is *not subject to any adjustment* on the basis of the contractor's cost experience in performing the contract." 48 CFR 16.202-1 (2010) (emphasis added).

makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work or to anticipate cost with any reasonable degree of confidence.” When CO Martin added the new payment language in the task order modification she elected to modify the task order to make payment contingent on the hours worked.

Moreover, JMA’s interpretation of the task order modification does not align with its conduct during the modification period. Prior to executing the modification, Dr. Mobley inquired about the meaning of the new payment terms and was informed by the CO that JMA would be paid based on the hours documented, and that the “contract” was firm-fixed-price. During the hearing, the CO did not cogently explain what she was referring to when she told Dr. Mobley that the contract, post modification, was firm-fixed-price. Although the CO may have stated the contract was firm-fixed-price, the express terms of the modification manifestly contradict any verbal representation the CO might have made.⁶ Confronted with this patent inconsistency, JMA was under a duty to inquire further as to the modification’s meaning. *Champion*, 10-2 at 170,346 (noting a contractor’s obligation to inquire in the face of a patent ambiguity in a contract (citing *Arcadis U.S., Inc. v. Department of the Interior*, CBCA 918, 08-1 BCA ¶ 33,807, at 167,353)). While Dr. Mobley made a preliminary inquiry, she did not seek clarification from the CO as to how the modification, which was to be paid based on the hours worked, could still be firm-fixed-price.⁷ JMA never objected to the task order modification’s language stating that during the modification period JMA would be paid only for the hours it worked, and while the modification was being administered, JMA’s invoices did not seek a firm-fixed-price.

After the task order modification was issued, JMA significantly changed its billing practices, notifying its employees that it would begin to track their hours spent on the project. JMA’s employees began recording their hours and submitted them to Mr. Mucke, who then invoiced GSA in an amount commensurate with the total hours reported multiplied by the applicable labor rates. This method of billing was different from the manner in which JMA billed for the original task order period.⁸ JMA evidenced by its invoicing during the task

⁶ It is unclear from the correspondence on March 8, 2010, whether Dr. Mobley and CO Martin were discussing the modification, the original task order, or the schedule contract when CO Martin represented that the contract was firm-fixed-price.

⁷ While CO Martin did not so testify, the labor rates in the schedule contract remained fixed.

⁸ During the time encompassing the base period task order, JMA invoices reflected a lump sum payment that did not provide a breakout of hours worked.

order modification period and subsequent conduct that it understood it would be paid differently from the way in which it was paid during the task order's base period. JMA clearly understood that during the modification period it would be paid based on the rates and hours it worked and provided to GSA. During administration of the task order modification, JMA did not seek a firm-fixed-price payment.

In sum, we cannot accept JMA's interpretation of the task order modification. The terms of the modification were not, as JMA would have the Board find, meaningless and irrelevant, as the labor rates and the hours it worked were indeed germane to payment. An objective reading of the task order modification, coupled with JMA's pre-dispute conduct during the modification period, does not support the conclusion that either party construed the task order, as modified, as firm-fixed-price.

Having determined that the language of the task order modification transformed the task order from one payable at a firm-fixed-price to one payable based on the hours worked and billed by JMA as verified by GSA, we turn to the question of GSA's entitlement to the claimed overpayments. Regarding invoice 306R, it is clear that JMA overbilled GSA by charging to that invoice time billed during the base period of the task order, from February 5 to March 8, 2010. During the OIG investigation, JMA's finance director, Mr. Mucke, explained to the auditors the nuances of JMA's MAS 90 system and noted that some hours worked in one billing period were carried over into the subsequent period. Mr. Mucke testified that, owing to the system's limitations, hours worked from March 1 through March 8, during the firm-fixed-price base period, were billed to invoice 306R. JMA has not rebutted this testimony. This "carry-over" type billing practice is inconsistent both with the method of invoicing for the original task order's firm-fixed-price base period and the method of invoicing during the modification period, where JMA was to be paid for the actual hours worked.

The CO's analysis of the overbilling on invoices 306R and 405R was reasoned and met GSA's burden of proof as to the fact and the amount of GSA's overpayments. JMA generally denied that an overbilling occurred but did not present compelling evidence disputing the CO's analysis. JMA's invoicing practices during the task order base period were clearly different from its billing practices during the modification period. Dr. Mobley herself conceded that, in retrospect, JMA's record-keeping was not fully reliable and could be described as sloppy. Because JMA failed to accurately monitor and report the hours worked as required by the task order modification, invoices 306R and 405R overstated the amounts due from GSA. As to invoice 306R, of the 620.25 hours reported, only 355.25 hours were supported by JMA's timesheets, reflecting an overbilling of 265 hours, and an overpayment of \$21,981.85. JMA reported a total of 451 hours worked in invoice 405R,

but only 335 hours were supported by JMA's timesheets, reflecting an overbilling of 116 hours, and an overpayment of \$ 14,263.29.

We considered the various other arguments made by JMA as to why it believes it should not be bound by the payment terms set forth in the task order modification and find these arguments to be without merit.

GSA also seeks \$990.46 in prompt payment discounts that it asserts would have been taken but for JMA's failures to include notice of them on its invoices. JMA argues that because the language of FAR 52.232-8 is permissive, JMA was not required to include the discount on its invoices, and GSA could have withheld the discount at its discretion. While JMA contested GSA's entitlement to recoup the prompt payment discounts, it did not present compelling evidence disputing the amount GSA seeks.

As noted above, a primary tenet of contract interpretation is that reasonable meaning must be given to all parts of the agreement so as to not render any portion of the agreement meaningless. *Hol-Gar*, 351 F.2d at 979 (and cases cited, *supra*.) We begin with the schedule contract, which contained FAR 52.212-4(g)(1)(vi), requiring that "[a]n invoice *must include* . . . [t]erms of any discount for prompt payment offered[.]" (Emphasis added). FAR 52.232-25(a)(4)(v), contained in the task order, also mandated that a proper invoice must include the discount for prompt payment terms. JMA offered GSA a prompt payment discount, and its applicable terms were agreed to, when the schedule contract and task order were awarded.⁹

Pursuant to the terms of the schedule contract and task order, JMA was required to include on its invoices notification of the prompt payment discount. JMA's invoices did not contain the notification, resulting in GSA not taking advantage of the discount agreed upon. The fact that GSA failed to realize a prompt payment discount applied when it processed the invoices,¹⁰ does not constitute a waiver of the right to take the discount. JMA is indebted

⁹ We cannot see how, as JMA asserts, the clause at FAR 52.232-8 is relevant to the dispute. FAR 52.232-8 addresses a vendor's right to provide a prompt payment discount on individual invoices where a discount was not agreed to as part of contract award. As noted, JMA agreed to provide a prompt payment discount as part of the award.

¹⁰ GSA's Public Buildings Service payments branch chief testified that the payments branch, located in Texas, did not have copies of schedule contracts or task orders, so it had no information as to a prompt payment discount unless it was included on the invoice. GSA's administration of invoice payments does not control our decision here so much as do FAR 52.212-4(g), FAR 52.232-25(a)(4)(v), and the fact that GSA

to GSA for \$990.46 in prompt payment discounts that GSA would have taken had the terms appeared on its invoices as required.

Decision

For the reasons above, JMA must return to GSA the \$37,235.60 in overpayments resulting from JMA's overbilling of labor hours and its failure to include on its invoices, as required by contract, the terms of its prompt payment discount offer. The appeal is **DENIED**.

PATRICIA J. SHERIDAN
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

H. CHUCK KULLBERG
Board Judge

schedule contract and task orders provide for auditing and adjustments long after goods and services are provided.