



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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**THIS OPINION WAS INITIALLY ISSUED UNDER PROTECTIVE ORDER AND  
IS BEING RELEASED TO THE PUBLIC IN ITS ENTIRETY ON  
JANUARY 13, 2021**

APPELLANT'S MOTION FOR SUMMARY JUDGMENT  
GRANTED IN PART; RESPONDENT'S CROSS-MOTION FOR SUMMARY  
JUDGMENT DENIED: December 18, 2020

CBCA 6027

WAGeworks, INC.,

Appellant,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Lars E. Anderson, Sally Ann Hostetler and James P. Miller of Odin Feldman Pittleman PC, Reston, VA; and Dale Bish of Wilson Sonsini Goodrich & Rosati, PC, Palo Alto, CA, counsel for Appellant.

Nicole Lohr and James Muetzel, Office of the General Counsel, Office of Personnel Management, Washington, DC, counsel for Respondent.

Before Judges **HYATT**, **KULLBERG**, and **SULLIVAN**.

**SULLIVAN**, Board Judge.

The Office of Personnel Management (OPM) contracted with WageWorks, Inc. for WageWorks to administer the flexible spending benefit program offered to federal employees. WageWorks timely appealed to the Board the decision of the OPM contracting officer that denied its claim for payment for efforts undertaken during the first six months

of contract performance. OPM contends that WageWorks was not entitled to receive payment under the contract until it took over the actual administration of the program.

The parties have cross-moved for summary judgment on the contract terms at issue in this dispute. OPM also asserts that WageWorks' actions in this matter constitute a prior material breach. Based upon the plain language of the contract, we grant WageWorks' motion and deny OPM's cross-motion. We leave for further proceedings the determination of the amount that WageWorks may recover.

### Background

#### I. Relevant Contract Terms

On March 1, 2016, OPM and WageWorks executed “a five-year firm-fixed price (FFP) contract . . . for the Federal Flexible Spending Account (FSAFEDS) Program Services.” Appeal File, Exhibit 34 at 3.<sup>1</sup> “The contract include[d] FFP Contract Line Item Numbers (CLINs), which specify pricing for each of the deliverables associated with the requirements described in the Performance Work Statement (PWS).” *Id.*

CLIN Structure. CLIN 0001, the CLIN at issue in this dispute, was for base year 1 (March 1, 2016–August 31, 2016) and established the fixed price of \$2.53 per account per month for “FSA Administration, which includes all costs to perform the deliverable areas as described in the PWS, including but not limited to:

- Development and Maintenance of Website
- Development and Production of Enrollment Portal
- Development, Production, and Distribution of Marketing/Educational Materials
- Development and Maintenance of Payroll Interfaces (BENEFEDS)
- Development and Maintenance of Interfaces with OPM-Sponsored FEHB and FEDVIP Plans
- Establishment and Maintenance of Flexible Spending Accounts, Including Grace Periods and Carryover
- Establishment and Operation of Claims Systems
- Establishment and Normal Operation (Excluding Open Season) of Call Center including Personnel, Training and Hardware
- Additional Call Center Expenses (Open Season Only)

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<sup>1</sup> All exhibits are found in the appeal file, unless otherwise noted.

- Establishment and Maintenance of Accounting/Financial System for OPM Contract
- Appeals
- Mail (Not Accounted for Above)
- Discrimination Testing
- Reporting
- Travel

Exhibit 34 at 4.

CLINs 10001, 20001, and 30001 were for base years 2 (September 1, 2016–August 31, 2017), 3 (September 1, 2017–August 31, 2018), and 4 (September 1, 2018–August 31, 2019), respectively, and identified the same per account per month price to perform the same non-exhaustive list of activities. Exhibit 34 at 5-7. Finally, CLIN 40001 was for the option year (September 1, 2019–August 31, 2020), at the same firm-fixed price for the same list of activities. *Id.* at 8.

The contract noted that:

all pricing is all-inclusive and FFP. The price includes all costs associated with providing the services for the Program. The FFP is the maximum amount the Contractor will receive per account. The actual aggregate amount may vary based on the number of accounts and on meeting performance targets as outlined in the Quality Assurance Surveillance Plan (QASP).

Exhibit 34 at 9. The contract further noted that “[t]he Contractor receives fixed prices for participants only. If an enrollee is not eligible post enrollment, fixed prices must be returned to the applicable agency.” *Id.*

Performance Work Statement. With the award of the contract, OPM sought “a qualified third party administrator to administer health and dependent care flexible spending accounts (FSAs) on a self-supporting basis for active civilian Federal employees.” Exhibit 34 at 38. OPM warned that the “biggest challenge will be integrating information from many different payroll offices while utilizing different systems and software” but also advised that information regarding all of the payroll systems would be available from another OPM contractor. *Id.* at 40. In the description of FSAFEDS administration, the contract listed the schedule of services that WageWorks was to provide, including processing services, collection services, management reports, and claim services (translation). *Id.* at 48. OPM sought the contractor’s ideas on limiting “start-up costs.” *Id.* The contract did not state that WageWorks would be paid for providing only these administration services and not for transition or implementation activities that were necessary to prepare for administration.

OPM emphasized that it would “allow a minimum of three months and no more than six months after contract award for transition services to a new Contractor.” Exhibit 34 at 40. Because the term year for the contract would begin every September 1, WageWorks was required to be “ready for implementation services by September 1, 2016.” *Id.* The contract did not define the terms “transition,” “transition services,” “implementation,” or “implementation services.”

In a couple of places, the contract requires that WageWorks provide services at “no additional cost.” For example, the contract requires WageWorks to accept paperless claims from other federal employee benefit providers and mandates that “[n]ew carriers must be added to the Paperless Reimbursement Program at no additional cost unless the carrier(s) require unreasonable special programming or handling as agreed by OPM and the Contractor.” Exhibit 34 at 57. WageWorks is further required to “provide Paperless Reimbursement Program maintenance at no additional cost to OPM.” *Id.* The contract does not state that transition or implementation services would be at no additional cost to OPM.

Funding Requirements. The contract also described how claim payments would be made to participants, how WageWorks was expected to fund claims payments, and the sources of funds available to pay claims. Exhibit 34 at 49-55. The contract warned that WageWorks was “at risk for all claims processed and administrative expenses during the FSAFEDS plan year. Should the Contractor have insufficient payroll deductions to pay claims, the Contractor is still responsible for paying these claims and, if needed, may request temporary assistance from the OPM Risk Reserve Account.” *Id.* at 43. Finally, the contract advised that “FSAFEDS will be fully self-supporting. The Contractor will not secure any payment from the Federal Government for administering FSAFEDS, for marketing/ongoing expenses, or for program losses . . . .” *Id.* at 64.

Billing Provisions. WageWorks was to be paid through “administrative fees, which are paid by participating Federal agencies.” Exhibit 34 at 38. WageWorks was responsible for billing and collecting from participating federal agencies the service fees for the accounts twice annually. *Id.* at 48. WageWorks was to collect two fees from participating agencies—fees that agencies paid to it and fees that agencies paid to OPM’s reserve account. *Id.* (reference to “service fees” and “reserve account fees”). OPM maintains a reserve account into which fees from participating agencies, forfeited participant allotments, quality assurance surveillance plan (QASP) penalty fees, and interest are placed. Respondent’s Response to Follow-Up Questions Resulting from the December 4, 2020, Video Conference at 4. OPM determined at the beginning of each year the service fee rate WageWorks would bill agencies and how much WageWorks could bill the reserve account, as provided in the contract. “At OPM’s sole discretion, the Risk Reserve Account may also be used to offset or ‘buy-down’ the administrative fees due from participating agencies to the Contractor.” Exhibit 34 at 58. The billing rates set by OPM are not tied to the rates in WageWorks’

contract. Respondent's Response to Follow-Up Questions Resulting from the December 4, 2020, Video Conference at 2.

Quality Assurance Surveillance Plans (QASPs). The contract included two QASPs, of which one covered the period from "contract award through transfer date" while the other covered "transfer date through end of base period." Exhibit 34 at 68-75. The QASPs had different requirements. The requirements of QASP #1 were all implementation activities, some of which had requirements triggered twenty-one days from contract award.

The performance standards were described as the "factors that OPM considers to be of the utmost importance to appropriately evaluate FSAFEDS operations and quality of services." Exhibit 34 at 66. Pursuant to Federal Acquisition Regulation (FAR) 37.601 (48 CFR 37.601 (2015)), OPM was required to "[s]pecify procedures for reductions of a charge or for reductions of a price of a fixed-price contract when services are not performed or do not meet contract requirements." *Id.*

Contract Clauses. The contract is a commercial items contract and includes requirements of the Prompt Payment Act. Exhibit 34 at 10 (FAR 54.212.4, Contract Terms and Conditions – Commercial Items). The contract included the requirement that any IT systems to be used in performance of the contract be "authorized to operate" by OPM. Exhibit 34 at 32 (1752.239-76, Security Assessment and Authorization (November 2012)). After contract execution, the parties modified this requirement to specify that the system must be authorized to operate by OPM's chief information officer and WageWorks was to seek authorization sixty days before operation. Exhibit 41 (Modification 001). WageWorks received its authorization to operate its IT system on August 23, 2016. Exhibit 43.

## II. Solicitation Terms

In the solicitation, CLIN 0001 covered the period "contract award–September 1, 2016," and contained the same list of FSAFEDS administration activities. Exhibit 24 at 5. The solicitation advised that an offeror "must propose fixed prices for each year of the base period and option year" and "all pricing is all-inclusive and [firm-fixed price]. Offerors should take into consideration all costs associated with providing their services for the Program." *Id.* at 10. OPM also required that offerors show sufficient financial assets because the successful contractor's responsibilities would include "funding start up costs before any administrative fees have been received . . . and paying valid claims to participants before corresponding payroll deductions have yet been received." *Id.* at 94.

OPM received questions during the contract procurement about the meaning and purpose of the disputed CLIN and incorporated the answers to those questions into the solicitation. *See, e.g.*, Exhibit 26 at 2. In response to a question about the beginning of the

first plan year, OPM stated that “[t]he period of performance for Base Year 1 will be contract award through August 31, 2016.” *Id.* at 17. When asked how an offeror should account for any expenses incurred prior to September 1, 2016, OPM stated that “the proposed contract award date is March 1, 2016. The offeror must decide how to account for all expenses.” Exhibit 27 at 2 (Amendment Number 003, Number 2A). When asked specifically about what period CLIN 0001 was to cover, OPM merely referred the offerors back to this previous answer:

**Question:** Is it OPM’s understanding that CLIN 0001 will begin effective upon the transition from the incumbent administrator, not at the start of Base Year 1, due to the transition period that is defined as a minimum of three months and no more than six months after contract award, per amendment 0002?

**Answer:** See Amendment Number 003, Number 2A, Answer.

Exhibit 28 at 2. OPM also directed offerors to “provide a complete business plan describing how you will develop and initiate the claims center and other administrative functions within three months after the March 1, 2016 proposed contract award date.” Exhibit 25 at 2.

### III. Disputed Invoice and WageWorks Claim

In February 2017, WageWorks submitted an invoice for the period March 1 through December 31, 2016. Exhibit 44. WageWorks charged OPM \$2.53 for 409,494 participants for the months March through August and \$2.53 for 418,228 participants for the months September through December. *Id.* OPM rejected this invoice as “improper” because the amounts charged for March 1 through August 31 were not for “FSA Administration.” Exhibit 47. In June 2017, at OPM’s request, WageWorks resubmitted the invoice for March 1 through August 31, 2016, and provided details as to the activities that it undertook during that period. Exhibit 56.

By letter dated August 18, 2017, WageWorks submitted a certified claim for payment of \$5,117,856.39, for services rendered March 1 through August 31, 2016. Exhibit 61. In calculating its claim amount, WageWorks credited against its invoiced amount for the period an amount that it received from ADP, Inc., the predecessor contractor, for funds collected on the contract. *Id.* In briefing, OPM disputed WageWorks’ ability to credit these funds in this manner. Respondent’s Response to Appellant’s Statement of Undisputed Material Facts and Statement of Genuine Issues of Fact, No. 10. Following a conference convened by the presiding judge to discuss the pending motions, counsel for WageWorks notified the Board that WageWorks “credited” all proceeds received from ADP to OPM and that there are no

funds available to credit against the amount owed for the base period at issue. Appellant's Supplemental Brief in Support of Summary Judgment at 5.

OPM received the copy of the claim sent by certified mail on August 24, 2017. Exhibit 62. The contracting officer denied the claim on December 22, 2017. *Id.* The contracting officer acknowledged that WageWorks incurred costs during the period March 1 through August 31, 2016. *Id.* at 3. However, the contracting officer explained that OPM only included CLIN 0001 "to pay for FSAFEDS administration services that could have been provided prior to the commencement of the Term Year (CLIN 10001 – Base Year 2 – September 1, 2016–August 31, 2017), if the transition period did not last the full six months." *Id.* at 2.

#### IV. Other Extrinsic Evidence

OPM highlights deposition testimony from a WageWorks employee that, in the administration benefits industry, "administration" means the "ongoing servicing of participant accounts." Respondent's Cross-Motion for Summary Judgment at 15. OPM also offers for our consideration internal communications between WageWorks employees that purportedly show that WageWorks knew that it would not receive payment for the period at issue.<sup>2</sup> These communications, consisting of emails and internal presentations, occurred both before and after contract award. *Id.* at 4-9. WageWorks disputes that the documents cited support these conclusions. Appellant's Reply In Support of Its Statement of Material Facts Not In Dispute and Opposition to Respondent's Statement of Material Facts Not in Dispute.

#### Discussion

##### WageWorks' Position Supported by Plain Language of the Contract

The issue presented by the parties' cross-motions for summary judgment is one of contract interpretation. What was WageWorks to receive for work performed during base year 1, March 1 through August 31, 2016? The answer is found in the plain language of the contract.

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<sup>2</sup> During a recent conference, counsel for OPM renewed OPM's motion to conduct depositions of WageWorks' representatives regarding what they knew or understood about the contract terms both before and after contract execution. OPM previously had withdrawn this motion because it understood that the key WageWorks personnel were unavailable for deposition due to other pending litigation.

Contract interpretation begins with the plain language of the contract. *LAI Services, Inc. v. Gates*, 573 F.3d 1306, 1314 (Fed. Cir. 2009). The inquiry ends if the plain language is unambiguous. *Hunt Construction Group, Inc. v. United States*, 281 F.3d 1369, 1373 (Fed. Cir. 2002). The contract is to be read as a whole to give reasonable meaning to all parts. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991). “The nature of the contract is determined by an objective reading of its language, not by one party’s characterization of the instrument.” *Jane Mobley Associates, Inc. v. General Services Administration*, CBCA 2878, 16-1 BCA ¶ 36,285 (quoting *Champion Business Services v. General Services Administration*, CBCA 1735, et al., 10-2 BCA ¶ 34,539).

We find that four parts of the contract provide the answer to the question presented. One, the language of CLIN 0001 itself—OPM contracted with WageWorks to begin providing FSA administration services on March 1, 2016, services which included the development of all of the necessary elements of the system that would be ready to administer the accounts no later than September 1, 2016. This interpretation is clear from the structure of CLIN 0001, which runs from March 1, 2016. OPM would like CLIN 0001 to be interpreted as a price for services rendered if WageWorks took responsibility for the program before September 1, 2016. The language does not support this interpretation. It is not written as a price to be paid for services performed from a transition date through August 31, 2016, but from the date of contract award. OPM’s interpretation would have us read out the date March 1, 2016, which we may not do.

We also cannot read out March 1, 2016, because there is no way WageWorks could have assumed responsibility for the program as of the date of contract award. Pursuant to the transition requirements of the contract, WageWorks was required to spend at least three and no more than six months preparing to take over the administration of the program. OPM’s exposure for these start-up costs was limited to six months. Finding that WageWorks was entitled to be paid for these preparation activities reconciles the terms of the contract.

Two, the activities listed under CLIN 0001 are the same activities listed for the remaining CLINs, over which there is no dispute that WageWorks should be paid. OPM asserts that these CLINs clearly tie to “FSAFEDS Administration” and that WageWorks was only entitled to be paid when it was actually administering the program. Yet, the activities listed are the same and do not distinguish between pre- and post-implementation. Moreover, these activities include the requirement to “develop” or “establish” several systems, systems that had to be brought on-line before WageWorks was actually responsible for the program. The activities are not limited to only those necessary to actually administer the benefits program.

Three, the contract language makes it clear that WageWorks was to be ready to transition no later than September 1, 2016, with the full slate of services. OPM needed

WageWorks to undertake significant effort to accomplish this transition, including making sure that it had all of the information regarding agency payroll systems. If the costs of this effort were not ones that WageWorks could bill, OPM needed to make this clear like it did with other aspects of the contract that were to be provided “at no additional cost” to OPM.

Four, OPM segregated the implementation activities into a separate quality assurance surveillance plan and asked WageWorks to put a portion of its fee at risk. Pursuant to FAR 37.601, the purpose of this plan was to ensure that these metrics for implementation were met. If WageWorks is not paid for this period, it cannot put a portion of its fees at risk. Moreover, this structure shows that OPM defined as separate periods for the purposes of quality assurance the periods between contract award and transition, and transition and the end of the base period. OPM failed to make the same distinction with the CLIN structure.

In advancing its own arguments regarding the interpretation of the contract, OPM highlights the language that WageWorks was to be paid based upon participants in the program. This language is consistent with the CLIN structure, which priced performance based upon the number of participants. This language does not support a finding that WageWorks was to be paid only for administering the program. Instead, it was just the way OPM chose to structure the pricing for the contract. Moreover, the contract provided that WageWorks was to obtain information on current participants and their payroll organizations from another OPM contractor. The contract did not provide that WageWorks had to wait for the transition date to learn this information.

OPM’s most compelling argument for its interpretation concerns the billing provisions of the contract. OPM asserts that, because its fees were to be paid by participating federal agencies, WageWorks would not be paid until it was administering the program and responsible for billing these agencies.<sup>3</sup> However, OPM undercuts its own argument with its acknowledgment that OPM’s annual determination regarding how much federal agencies would pay and how much WageWorks could bill the reserve fund is not tied to the contract.

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<sup>3</sup> During the recent conference to discuss the motions, OPM asserted that section 1127 of Public Law 108-136 is a statutory bar to paying WageWorks’ claim for start-up costs out of the reserve fund maintained by OPM. Public Law 108-136 requires that participating agencies not charge employees any fees for the benefits program and pay fees to OPM for the administrative cost of the program. Pub. L. No. 108-136, div. A, title XI, § 1127, 117 Stat. 1640 (2003) (codified at 5 U.S.C. § 1101 note (2018)). In supplemental briefing on this point, it appears that OPM has not continued this argument. Respondent’s Response to Follow-Up Questions Resulting from the December 4, 2020, Video Conference at 2-3.

OPM also notes that the solicitation advised that the successful contractor would have to “fund[] startup costs before any administrative fees have been received.” This provision does not provide the necessary support for OPM’s position. First, this provision does not say that WageWorks had to shoulder all startup costs, only that it had to fund those costs before it received administrative fees. Second, this provision was among several requirements for WageWorks to have sufficient financial wherewithal to cover claims and other expenses of the program in case there were gaps between when claims were received and paid and when payroll deductions for those claims were received. However, the contract did not state that WageWorks would not be reimbursed for these costs, only that there was a timing issue. Finally, there is a distinction between the terms “funding” and “payment” in the contract. This provision discusses “funding,” but other provisions regarding WageWorks’ compensation under the contract discuss “payment.” Because both terms are used, we do not construe “funding” in the provision OPM highlights to mean “payment,” as in WageWorks must pay for startup costs.

OPM also highlights that the contract did not allow WageWorks to administer accounts until it received authority to operate its computer systems. Again, this fact would be relevant if the contract made it clear that WageWorks was not to be paid for its efforts until it was administering accounts. The requirement to obtain approval of its computer systems was not tied to any payment provisions in the contract. Reading the contract as we do does not render this approval provision superfluous or in conflict with any others.

Because the plain language of the contract is clear, we do not reach the extrinsic evidence regarding what WageWorks purportedly understood regarding the contract terms either before or after the contract was executed. “Where, as here, the provisions of the Agreement are phrased in clear and unambiguous language, they must be given their plain and ordinary meaning, and we may not resort to extrinsic evidence to interpret them.” *Coast Federal Bank, FSB v. United States*, 323 F.3d 1035, 1038 (Fed. Cir. 2003) (citing *McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996)).<sup>4</sup>

Similarly, we need not entertain OPM’s evidence regarding what the term “administration” means in the benefits administration industry. “A contracting party cannot, for example, invoke trade practice and custom to create an ambiguity where a contract was not reasonably susceptible of differing interpretations at the time of contracting.” *Metric Constructors, Inc. v. National Aeronautics & Space Administration*, 169 F.3d 747, 752 (Fed.

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<sup>4</sup> For the same reasons, we deny OPM’s renewed motion for depositions of WageWorks’ representatives. Since the contract is clear on its face, further discovery into what WageWorks’ representatives knew or understood regarding the meaning of the contract terms is unnecessary.

Cir. 1999). The generalized statement regarding the meaning of the term “administration” upon which OPM relies cannot overcome the specific provisions of the contract that detail a price to be paid to WageWorks for the first base period of the contract.

#### WageWorks Did Not Commit a Prior Material Breach

OPM also alleges that WageWorks’ actions leading to this appeal constitute a prior material breach of the duty of good faith and fair dealing and seeks summary judgment on this alternative basis. Prior material breach is a federal common law defense asserted when a party breaches a contract after another party has already breached the same contract. *Laguna Construction Co. v. Carter*, 828 F.3d 1364, 1369 (Fed. Cir. 2016). The Federal Circuit has held a prior material breach can “bar a contractor’s breach claim against the government, even if the government’s later-occurring breach happened without knowledge of the first breach.” *Id.* Whether a particular breach is material “depends on the nature and effect of the violation in light of how the particular contract was viewed, bargained for, entered into, and performed by the parties.” *Hansen Bancorp, Inc. v. United States*, 367 F.3d 1297, 1312 (Fed. Cir. 2004) (quoting *Stone Forest Industries, Inc. v. United States*, 973 F.2d 1548, 1551 (Fed. Cir.1992)).

OPM asserts that WageWorks breached the covenant of good faith and fair dealing by failing to inform OPM that it had a different interpretation of the contract and by seeking payment based on this interpretation. Given our determination that WageWorks’ interpretation was correct, the actions by WageWorks to advance its own interpretation of the contract and seek payment based on that interpretation cannot be a breach of the covenant of good faith and fair dealing. The “‘implied duty of good faith and fair dealing cannot expand a party’s contractual duties beyond those in the express contract or create duties inconsistent with the contract’s provisions.’” *Metcalf Construction Co. v. United States*, 742 F.3d 984, 991 (Fed. Cir. 2014) (quoting *Precision Pine & Timber, Inc. v. United States*, 596 F.3d 817, 831 (Fed. Cir. 2010)). Therefore, WageWorks’ conduct does not constitute a prior material breach.

#### Further Proceedings Are Needed to Determine Amount Owed to WageWorks

The amount owed WageWorks for March 1 through August 31, 2016, should be simple to determine. One only need multiply the number of participants in the program per month by WageWorks’ rate of \$2.53. However, WageWorks, in its claim, subtracted from this amount \$1,098,262.53, which was an amount that it had received from ADP, the predecessor contractor, for funds collected for the program. In briefing, OPM challenged whether WageWorks may properly apply this credit pursuant to the contract. In a further wrinkle, WageWorks explained in a recent filing that all funds received from ADP were credited to OPM and not retained by WageWorks. OPM has not responded to this further

information. Because the briefing on this issue is not complete, the Board will conduct further proceedings to determine the amount owed by OPM for the base period.

WageWorks seeks interest on its claimed amounts under both the Prompt Payment Act (PPA), 31 U.S.C. §§ 3901-3907 (2018), and the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109. The PPA provides for the payment of interest on contract payments at a rate prescribed by the Secretary of the Treasury. 31 U.S.C. § 3902(a). PPA interest begins to accrue on supply and service contracts thirty days after receipt of a proper invoice and accrues for a maximum of one year. However, there is no interest penalty under the PPA where a contractor’s request for payment is disputed by the Government. *Id.* § 3907(c); *Delta Air Lines, Inc. v. General Services Administration*, CBCA 1306, 09-1 BCA ¶ 34,052. “Disputed contract payment amounts are subject to Contract Disputes Act interest, not Prompt Payment Act interest.” *George Sollitt Construction Co. v. United States*, 64 Fed. Cl. 229, 304 (2005) (citation omitted). Here, OPM rejected WageWorks’ two invoices because it disputed that WageWorks was entitled to payment under the contract. Therefore, WageWorks may not recover PPA interest on the amount owed.

WageWorks may, however, recover CDA interest on its claimed amount. The CDA provides for the payment of interest on an amount found due to a contractor on a claim. 41 U.S.C. § 7109(a). Interest accrues from the date the contracting officer receives the contractor’s claim until the date of payment. *Id.* OPM received the claim by certified mail on August 24, 2017, and interest began accruing on that date.

### Decision

WageWorks’ motion for summary judgment is **GRANTED IN PART**, and OPM’s cross-motion is **DENIED**. WageWorks may recover for the period March 1 through August 31, 2016, plus CDA interest on its claim, calculated from August 24, 2017. The Board will issue a separate order for further proceedings in this appeal to determine the quantum amount.

Marian E. Sullivan  
MARIAN E. SULLIVAN  
Board Judge

We concur:

Catherine B. Hyatt  
CATHERINE B. HYATT  
Board Judge

H. Chuck Kullberg  
H. CHUCK KULLBERG  
Board Judge