UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: June 2, 2025

CBCA 8336

TRANSOX, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Timothy A. Furin and Gregory Winter of Scale LLP, San Francisco, CA, counsel for Appellant.

David G. Fagan, Office of General Counsel, Department of Veterans Affairs, Bend, OR, counsel for Respondent.

LESTER, Board Judge.

Appellant, TransOx, Inc. (TransOx), seeks an equitable adjustment of $135,805.67, plus interest under the Contract Disputes Act (CDA), 41 U.S.C. § 7109 (2018), under a contract through which it provides home oxygen services to Department of Veterans Affairs (VA) medical center outpatients. TransOx asserts that, under the terms of its contract, it is entitled to recover a "one time delivery fee" for each contractor-purchased item that it delivers to a VA outpatient. The VA, challenging TransOx's position, argues that the contract unambiguously limits the "one time delivery fee" to one-time or one-off deliveries of equipment to a VA outpatient that TransOx must make outside the context of its regular monthly visits to each patient. The parties' one-time delivery fee dispute is largely one of contract interpretation. TransOx's equitable adjustment request also includes legal fees that TransOx incurred in attempting to negotiate a resolution to the parties' dispute before it

submitted a certified claim and interest on its original unpaid invoices under the Prompt Payment Act (PPA), 31 U.S.C. §§ 3901-3907.

TransOx elected to have this appeal decided under the small claims procedure identified in Rule 52(a) of the Board's Rules (48 CFR 6101.52 (2024)), which implements section 7106(b) of the CDA, 41 U.S.C. § 7106(b). Pursuant to the CDA, "[a]n appeal under the small claims procedure shall be resolved, whenever possible, within 120 days from the date the contractor elects to use the procedure." *Id.* § 7106(b)(3). Consistent with that statutory provision, the Board has worked to ensure issuance of a decision in this appeal by June 2, 2025, to satisfy that 120-day deadline.

The parties have agreed to have the Board decide this appeal on the written record, without a live hearing, consistent with Board Rule 19. The Board's decision here, issued by a single judge as permitted by Rule 52(c), "is final and conclusive and may not be set aside except in cases of fraud." 41 U.S.C. § 7106(b)(4). It has "no value as precedent for future cases." *Id.* § 7106(b)(5).

Findings of Fact

I. The Contract

On February 28, 2024, the VA awarded TransOx contract no. 36C24924D0025 (the contract), an indefinite-delivery indefinite-quantity (IDIQ) contract to provide home oxygen services to VA outpatients throughout the Tennessee Valley Healthcare System (TVHS), the James H. Quillen VA Medical Center in Mountain Home, Tennessee (Mountain Home VAMC or Mt Home); and the Memphis VA Medical Center (Memphis VAMC) catchment areas. Exhibit 1 at VA000001, VA000007. It guaranteed a minimum purchase of at least $2000 in services and set a maximum quantity of $30 million. *Id.* at VA000045.[1] The contract, which had an effective date of April 1, 2024, provided for a one-year base period, plus four one-year extension options. *Id.* at VA000001, VA000009.

Under the contract, TransOx was required to "furnish all labor, supplies, delivery, after-hours support, and storage of equipment, maintenance, and incidentals to provide home

[1] In a declaration filed with the Board, TransOx's president informed the Board that the maximum value of the contract is $42,830,121. Rebuttal Declaration of Justin Schaeffer (May 12, 2025) ¶ 5. The Board cannot find that dollar figure in the version of the contract that is contained in the Rule 4 appeal file. Nevertheless, the ceiling amount of the contract is irrelevant to this decision.

oxygen services to all beneficiaries," with services to "include delivery, set-up, education, pick-up, cleaning, and preventative maintenance" of both "vendor provided and Government supplied equipment." Exhibit 1 at VA000007 (§ 3); *see id.* (§ 2: "Contractor is responsible for delivery and associated services related to delivery/proper use of equipment."). TransOx was also to assume responsibility for "all logistical/administrative functions involved with the day-to-day operation of providing the service to the Veteran and their families, including furnishing warehouse space, surplus supplies, and in-home respiratory therapy visits for patients with ventilators." *Id.* (§ 2). The contract identified the types of supplies that TransOx would provide:

> The requirement includes providing in home supplies such as the following: low decibel concentrator (rental) with two broad categories of flow rates and replacement parts; various cylinder sizes (rental) to provide oxygen . . . and replacement parts; portable oxygen concentrator; refillable oxygen cylinders/concentrator; valve fireproof cannula; procurement/distribution of two types of oxygen and backup/spare parts; nasal cannula to include micro nasal cannula, high flow, pendant, nasal cannula with cushion ear piece, soft pronged nasal cannula/masks to include tracheostomy mask, bi-flow nasal mask, aerosol mask and replacement parts, and any interface, adapter or connection to enhance oxygen delivery/masks, tracheostomy mask, bi-flow nasal mask, aerosol mask and replacement parts, and any interface, adapter or connection to enhance oxygen delivery; and replacement parts; [and] oxygen bleed in connector, portable oxygen systems (used when a Veteran travels).

Id. (§ 2). "All services [were to] be performed in the Veteran's place of residence or in a nursing home or assisted living facility housing the veteran." *Id.* at VA00008 (§ 4); *see id.* at VA000014 (§ 6.4).

Section 6.2 of the contract, titled "New Patient Set-Ups Oxygen Systems," provided instructions for initial set-ups of oxygen systems in VA outpatient residences, which would be performed after physicians issued prescriptions for them. Exhibit 1 at VA000010 (§ 6.2(a)). Initial set-ups for new patients would occur throughout the term of the contract. Following each initial set-up, "[a]ll patients receiving services under this contract [had to] be visited by a contract representative on a monthly visit." Exhibit 1 at VA000014 (§ 6.3); *see id.* at VA000015 (§ 6.8). The contract provided that, following each monthly visit, "[t]he Contractor shall notify the COR or their designee during the home visit if the Contractor's staff determines that the presence of oxygen in the home presents such a danger that the oxygen shall be removed, or in the case of an initial set-up, not placed in the home." *Id.* at VA000011 (§ 6.2(c)).

The contract also contemplated that "[t]he equipment needs [for any particular VA outpatient] are subject to change as determined by the prescribing physician." Exhibit 1 at VA000014 (§ 6.4). To the extent that any prescription change required delivery of new equipment to an outpatient, TransOx would be obligated to deliver the new equipment following the physician's issuance of the new prescription. *Id.* at VA00007 (§ 3).

The contract included a chart identifying twenty line item numbers correlating with the various services that TransOx would be required to perform and products that it would have to purchase during the base year of the contract. Exhibit 1 at VA000046-49. It also provided estimated quantities for each line item, *see id.*, but indicated that the "[q]uantities for each Line Item . . . are estimates only, and the actual number of quantities required during the term of the contract may be more or less than the quantities indicated." *Id.* at VA000045. One of the largest line items was Line Item 001, with an estimated quantity of 45,600 of "Oxygen concentrator five (5) liter, stationary, each, per month, per unit for patients of the TVHS, Mt Home and Memphis VAs" and a total estimated cost of over $5 million. *Id.* at VA000046. Other line items covered rental costs for various types of equipment that TransOx would provide VA outpatients: an estimated total rental of 43,068 portable "E" or M-6 systems; 26,412 oxygen conserving devices; 360 liquid oxygen systems; 432 liquid oxygen portable conserving devices; 72 contractor-owned ventilators; 696 "H" tanks; and 1812 portable concentrators. *Id*. at VA000046-48. Another line item identified charges for the delivery of government owned property, with an estimated quantity of only thirty-six units over the course of the base year:

ITEM NUMBER	DESCRIPTION OF SERVICES	EST QTY	UNIT	UNIT PRICE
. . . . .				
0014	Delivery of government owned property, each, per visit, per patient for patients of the TVHS, Mt Home and Memphis VAs.	36.00	EA	$102.30[]

Id. at VA000046, VA000048.

The provision in dispute in this appeal involves a "one time delivery fee" contained in Line Item 16, with an estimated quantity of 612 units, and reads as follows:

0016	One time delivery fee for any purchased items, each, per delivery,	612.00	EA	$40.92[]

> per patient for patients of the TVHS,
> Mt Home and Memphis VAs.

Exhibit 1 at VA000048. Nowhere else in the contract, other than in the descriptions of the option-year line items that correlate with and copy the language of Line Item 16 (that is, Line Items 1016, 2016, 3016, and 4016), is a "one time delivery fee" ever mentioned, described, or explained.

None of the line items in the contract identify any payments for the monthly visits that the contractor is required to make to all patients receiving services. *See* Exhibit 1 at VA000046-49.

As for payment, the contract provided that "[p]ayment shall be made [to TransOx] monthly in arrears based upon the Government's certification of a properly submitted invoice." Exhibit 1 at VA000029. "At the end of [each] month," TransOx was to "submit an invoice and back-up documentation to the CORs for review," *id.*, after which the VA would make payment once the invoice was approved.

II. Comparing the Contract's Terms with the Solicitation Leading to its Award

The VA issued the solicitation that led to the award of the contract on March 30, 2023. Exhibit 2 at VA000127. The clauses and language of the solicitation were, for the most part, the same as those which the contract eventually contained, with one significant exception. The solicitation did not contain the chart with line item descriptions that was included in the contract. Instead, the solicitation contained a heading titled "Equipment Specifications" under which was a subheading for each anticipated line item followed by a paragraph describing what that line item was. *See id.* at VA000149-55. The Line Item 17 subheading in the solicitation, which was renumbered in the awarded contract as Line Item 16, was titled "One Time Delivery Fee," but the two paragraphs following that title oddly say nothing about delivery fees. The solicitation provision associated with Line Item 17 read, in its entirety, as follows:

> Line Item 17. One Time Delivery Fee
>
> Each respective VA Medical Center shall be provided with the names of equipment, uses, the manufacturer's guidelines and specifications for safe use, maintenance requirements, any warnings, cleaning procedures, and output assurances. The Contractor shall maintain the serial number of all equipment provided and be able to track equipment to each individual patient. All equipment shall be checked to ensure that it is working properly according to

> manufacturer's guidelines, documented on a tag or label affixed to the equipment, dated, and signed. Failure to check or clean equipment prior to delivery shall result in non-payment for delivery. This includes equipment delivered to the respective VA Medical Center. All reissued oxygen equipment delivered shall be cleaned/sanitized/disinfected by approved methods and be in first-class operating condition, in accordance with the manufacturer's recommendations. In the event a piece of faulty oxygen equipment is delivered, or the delivery is incomplete, as determined by the COR, subsequent trips shall be made without additional cost to the VA.
>
> The VA will not pay for the Contractor's lost or damaged equipment provided under this contract.

Exhibit 2 at VA000154. Elsewhere in the solicitation, the VA provided an estimated quantity for the solicitation's Line Item 17 in the base year, identifying an estimated quantity of 359 delivery fees for the TVHS, 240 for the Mountain Home VAMC, and one for the Memphis VAMC. *Id.* at VA000167-70.

During the solicitation process, perhaps because of the seeming disconnect between the "Line Item 17" subheading described above and the two paragraphs below it, an offeror submitted a question to the procurement contracting officer asking what the Line Item 17 delivery fee was supposed to cover. Specifically, the offeror asked whether the one-time delivery fee identified in the Line Item 17 subtitle referred to the contractor's delivery of an ultra-fill system, which was required by and described in the preceding line item (then numbered Line Item 16 but renumbered as Line Item 15 in the final contract), to the VA medical centers, as follows:

> Line Item 17: Please confirm this is the delivery fee for item 16. Item 17 (page 28) appears that it should be delivering equipment to the VA Medical Center. Please clarify.

Exhibit 5 at VA000256. The VA contracting officer responded to this question as follows: "No, this is for a one-time delivery of any equipment to a veteran." *Id.* This question-and-answer was added to the solicitation through amendment no. 2 on June 30, 2023. *Id.* at VA000247. Nevertheless, we see no language in the contract incorporating this solicitation amendment or this question-and-answer into the contract.

TransOx submitted its proposal in response to the solicitation on August 18, 2023. Exhibit 20. It included a price of $40.92 for each delivery under Line Item 17 (now the contract's Line Item 16). *Id.* at 63-66. Its president and vice-president have attested that,

after reviewing the original solicitation language and the answer to the other offeror's question about Line Item 17, they decided to recoup the costs of monthly visits, for which there was no separate line item, as part of TransOx's delivery of equipment to patients under Line Item 17 (now Line 16) because that was the line item "for a one-time delivery of any equipment to a veteran[,] and, in [TransOx's] experience, most deliveries of equipment to veterans occurred during monthly patient visits." Declaration of Justin Schaeffer (May 7, 2025) ¶¶ 5-6 [Schaeffer Declaration]; *see* Declaration of Nick McLendon (May 7, 2025) ¶¶ 4-5 [McLendon Declaration].

When the VA eventually issued the contract, it retained the "Equipment Specifications" heading, followed by the "Line Item 1" subheading and the language that it had used to describe Line Item 1. Exhibit 1 at VA000024-26. It then included the numerous paragraphs that, in the solicitation, had been placed and grouped beneath different line item subheadings, presumably tying specific paragraphs with specific line items, but, in the contract, removed all of the subheadings and any reference to the subheadings, except for the "Line Item 1" subheading. *See id.* at VA000026-30. That is, the manner in which the paragraphs were now placed in the contract, it looked like all of the paragraphs were tied to the "Line Item 1" subheading. *Id.* at VA000024-30. Accordingly, although the two paragraphs that the VA had originally placed under the "Line Item 17" subheading in the solicitation are included in the awarded contract, there is no language in the contract tying them to Line Item 17 (renumbered Line Item 16 in the contract). *Compare id.* at VA000029 *with* Exhibit 2 at VA000154. Instead, those paragraphs now read in the contract as though they relate to Line Item 1. In addition, the VA removed from and did not include in the awarded contract the list of estimated quantities for the TVHS, Mountain Home VAMC, and Memphis VAMC that were listed in the solicitation.

As noted above, the solicitation did not contain the chart that the VA later included in the contract, which identified each line item and provided new descriptive language for each line item. *See* Exhibit 2 at VA000173. The VA added that chart, plus the descriptive language for each line item, only when it issued the contract. Accordingly, the language in the contract describing the contract's Line Item 16 (formerly Line Item 17 in the solicitation), which reads, "One time delivery fee for any purchased items, each, per delivery, per patient for patients of the TVHS, Mt Home and Memphis VAs," *see* Exhibit 1 at VA000048, was *not* contained in the solicitation.

III. The VA's Task Order

On May 1, 2024, the VA issued task order no. 36C24924N0461 (the task order) to TransOx for home oxygen services from May 1, 2024, through April 30, 2025, for the "TVHS, Mt Home and Memphis VAs" with a ceiling amount of $8,566,024.20. Exhibit 4

at VA000242-46. For Line 16 in the task order, the VA provided an estimated quantity of fifty-one for the "one time delivery fee for purchased items, each, per delivery, per patient." *Id.* at VA000245.

TransOx began performing its work under the task order in phases, starting with TVHS outpatients on May 1, 2024; adding Memphis VAMC outpatients on June 1, 2024; and adding Mountain Home VAMC outpatients on July 1, 2024. Schaeffer Declaration ¶ 12; Declaration of Chrissie Perry (May 7, 2025) ¶ 4 [Perry Declaration]. On June 12, 2024, TransOx submitted its first monthly invoice to the VA for work for TVHS and, in that invoice, included a Line Item 16 delivery fee for each contractor-purchased item that it delivered to a VA outpatient during the prior month. Exhibit 84; Schaeffer Declaration ¶ 26. The VA paid that invoice, without complaint, as well as the next several invoices that TransOx submitted for TVHS and the Memphis VAMC, all of which contained Line Item 16 delivery fees for each contractor-purchased item that TransOx delivered to outpatients. Exhibits 48, 51, 52, 54, 55, 57, 58, 61, 64, 88, 89, 91, 94, 95, 97, 104; Schaeffer Declaration ¶¶ 13-14, 18-19; Perry Declaration ¶¶ 5-6, 11-12. The billed delivery fees that the VA paid far exceeded the quantity of Line Item 16 fees that the VA had estimated in the task order.

Beginning with TransOx's August 13, 2024, invoice for the Mountain House VAMC, its October 4, 2024, invoice for TVHS, and its November 12, 2024, invoice for the Memphis VAMC, the VA directed TransOx to remove charges for deliveries of contractor-purchased items to VA outpatients and to resubmit its invoices without the delivery fees. *See* Exhibits 16, 65, 67, 100, 101; Schaeffer Declaration ¶¶ 15-16, 20-21, 23; Perry Declaration ¶¶ 7, 12, 15. The VA contracting officer informed TransOx that the Line Item 16 delivery fee is not chargeable for deliveries of equipment, including installation set-up, that are made as part of a monthly visit and that the fee is applicable only to visits that are not routine. Exhibits 15 at VA000309, 16 at VA000316. TransOx complied with the VA's request and was ultimately unable to bill a fee for 3251 deliveries of contractor-purchased items to VA outpatients made between July 1 and October 31, 2024. Exhibits 68, 70, Perry Declaration ¶ 20. The total amount of unpaid fees for deliveries that TransOx was instructed not to invoice is $133,030.92. Perry Declaration ¶ 20.

IV. TransOx's Certified Claim and Appeal

Between August 13 and November 21, 2024, TransOx, through legal counsel, conferred with the VA contracting officer and agency counsel in an attempt to resolve the delivery fee payment issues without resorting to the contract's formal Disputes clause process or submitting a certified claim. Exhibits 16 at VA000315-20, 17 at VA000321-26; Schaeffer Declaration ¶ 29. Those discussions did not resolve the parties' dispute.

On November 25, 2024, TransOx submitted a certified claim to the VA contracting officer, seeking an equitable adjustment of $135,805.67 plus interest under the CDA. Exhibit 18 at VA000327. The amount sought included $133,030.92 for unpaid delivery fees incurred between July 1 and October 4, 2024, for which TransOx was not allowed to invoice; $2362.50 in legal fees incurred "incident to contract administration or incurred in the furtherance of negotiation of the parties' disputes"; and $412.25 in interest under the Prompt Payment Act (PPA), 31 U.S.C. §§ 3901-3907, calculated from the date that TransOx submitted its invoices and running through the date of claim submission. *Id.* at VA000330-34.

On January 31, 2025, after more than sixty days had passed without a decision from the contracting officer, TransOx filed a notice of appeal with the Board based on the contracting officer's "deemed denial" of its claim, which the Clerk of the Board docketed as CBCA 8336. In its notice of appeal, TransOx elected to have the Board process the appeal under the Board's small claims procedure pursuant to Rule 52(a). The VA did not notify the Board of any grounds for objection, and the parties presented the Board with a plan for expedited discovery and for resolution of this appeal on the written record under Rule 19. The Board adopted the parties' schedule. As agreed between the parties, on May 7, 2025, each party filed a brief in support of judgment on the written record in its favor, supplemented by declarations from fact witnesses. The parties voluntarily waived the right to submit response or reply briefs, but each filed supplemental rebuttal declarations on May 12, 2025.

Discussion

I. TransOx's Election of the Rule 52(a) Small Claims Procedure

The CDA requires that the Board include in its Rules "a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in dispute is $50,000 or less, or in the case of a small business concern (as defined in the Small Business Act (15 U.S.C. 631 et seq.) and regulations under that Act), $150,000 or less." 41 U.S.C. § 7106(b)(1). The Board has complied with that requirement through Rule 52(a). "The small claims procedure is applicable at the sole election of the contractor," 41 U.S.C. § 7106(b)(1), at any time "up to 30 days after receiving the respondent's answer." Rule 52(a). TransOx's invocation of the procedure as part of its notice of appeal is indisputably timely. Further, TransOx alleged in its notice that it is a small business concern under the Small Business Act and that its claim seeking payment of $135,805.67 falls within the $150,000 threshold for invoking the procedure. The VA did not object, and we therefore have applied and followed the small claims procedure in deciding this appeal.

II. TransOx's Claim for Unpaid Delivery Fees

A. Contract Interpretation Principles

The parties' dispute over TransOx's request for payment of delivery fees involves an issue of contract interpretation.

"In resolving disputes involving contract interpretation, we begin by examining the plain language of the contract," which we "construe . . . 'to effectuate its spirit and purpose giving reasonable meaning to all parts of the contract.'" *M.A. Mortenson Co. v. Brownlee*, 363 F.3d 1203, 1206 (Fed. Cir. 2004) (quoting *Hercules, Inc. v. United States*, 292 F.3d 1378, 1381 (Fed. Cir. 2002)). "[A]n 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 Manufacturing Corp. v. United States*, 351 F.2d 972, 979 (Ct. Cl. 1965).

"The threshold question [in interpreting a contract] is whether the plain language of the contract 'supports only one reading or supports more than one reading and is ambiguous.'" *LAI Services, Inc. v. Gates*, 573 F.3d 1306, 1314 (Fed. Cir. 2009) (quoting *NVT Technologies, Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004)). To find an ambiguity, "it is not enough that the parties differ in their respective interpretations of a contract term." *Metric Constructors, Inc. v. National Aeronautics & Space Administration*, 169 F.3d 747, 751 (Fed. Cir. 1999). "Rather, both interpretations must fall within a 'zone of reasonableness'" when the contract is read as a whole. *Id.* (quoting *WPC Enterprises, Inc. v. United States*, 323 F.2d 874, 876 (Ct. Cl. 1963)). "Ambiguity exists [only if] contract language can reasonably be interpreted in more than one way." *LAI Services*, 573 F.3d at 1314. "If the plain language of the contract is unambiguous on its face, the inquiry ends, and the contract's plain language controls." *Airclaims, Inc. v. Department of the Interior*, CBCA 2554, 12-2 BCA ¶ 35,156, at 172,536.

Only if the contract language is ambiguous may we turn to extrinsic evidence to evaluate the contract's meaning. *Greco v. Department of the Army*, 852 F.2d 558, 560 (Fed. Cir. 1988); *see Coast Federal Bank, FSB v. United States*, 323 F.3d 1035, 1038 (Fed. Cir. 2003) ("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."). If, even after considering extrinsic evidence, the ambiguity cannot be resolved, tribunals "apply the rule of *contra proferentem*, which requires that ambiguous or unclear terms that are subject to more than one reasonable

interpretation be construed against the party who drafted the document." *Turner Construction Co. v. United States*, 367 F.3d 1319, 1321 (Fed. Cir. 2004); *see Gardiner, Kamya & Associates, P.C. v. Jackson*, 467 F.3d 1348, 1354 (Fed. Cir. 2006) ("[B]efore resorting to the doctrine of *contra proferentem*, we may appropriately look to extrinsic evidence to aid in our interpretation of the contract." (citation omitted)).

"[A]n exception to this general rule of *contra proferentem* exists when the ambiguity is patent." *Interstate General Government Contractors, Inc. v. Stone*, 980 F.2d 1433, 1434 (Fed. Cir. 1992). Assuming that the ambiguity was identifiable in the solicitation upon which the contractor based its bid or offer, "[t]he existence of a patent ambiguity in the contract raises the duty of inquiry, regardless of the reasonableness of the contractor's interpretation," *id.* at 1434-35 (quoting *Fortec Constructors v. United States*, 760 F.2d 1288, 1291 (Fed. Cir.1985)), which "requires the contractor to 'inquire of the contracting officer the true meaning of the contract before submitting a bid'" or offer. *Id.* at 1435 (quoting *Newsom v. United States*, 676 F.2d 647, 649 (Ct. Cl. 1982)). The contractor's failure to recognize an obvious ambiguity in the solicitation does not excuse the contractor from its obligation to seek clarification. *Chris Berg, Inc. v. United States*, 455 F.2d 1037, 1045 (Ct. Cl. 1972). If the contractor fails to ask the contracting officer to clarify the ambiguity, "the contractor forfeits the opportunity to rely upon its unilateral, uninformed interpretation and bears the risk of misinterpretation." *Burnside-Ott Aviation Training Center v. Dalton*, 107 F.3d 854, 860 (Fed. Cir. 1997).

To assist the Board in interpreting the contract, both TransOx and the VA have provided the Board with declarations from fact witnesses—the president and vice-president of TransOx for appellant and the VA contracting officer for the VA—telling the Board how each of them interpreted the solicitation language. The portions of the declarations identifying each party's subjective understanding of the solicitation terms are uniformly unhelpful to the Board. In certain limited circumstances where a contract provision is ambiguous, a tribunal might consider a witness declaration "for the limited purpose of shedding light on the parties' objective intent by clarifying the circumstances affecting a contract or the meaning of terms found within the four corners of the contract itself," but it "may never be used to discern or confirm the unilateral subjective intent of one or more of the parties." *Applied Companies v. United States*, 37 Fed. Cl. 749, 759 (1997), *aff'd*, 144 F.3d 1470 (Fed. Cir. 1998). "It is not the subjective intent of the drafter [or the receiving party], but rather the intent that is conveyed by the language used, that governs the contract's interpretation." *ACM Construction & Marine Group, Inc. v. Department of Transportation*, CBCA 2245, et al., 14-1 BCA ¶ 35,537, at 174,151. "The unexpressed, subjective unilateral intent [or understanding] of one party is insufficient to bind the other contracting party, especially when the latter reasonably believes otherwise," *Firestone Tire & Rubber Co. v. United States*, 444 F.2d 547, 551 (Ct. Cl. 1971), and declarations disclosing witnesses'

personal interpretations of the Line Item 16 delivery fee language are not relevant. *See, e.g.*, *Parcel 49C Ltd. Partnership v. General Services Administration*, GSBCA 15222, 00-2 BCA ¶31,073, at 153,406-07 (finding the contracting officer's declaration regarding his subjective interpretation of a key paragraph in the contract "of no use as interpretative" of its meaning).

B. The Plain Language of the Contract

The parties' dispute relates to the delivery fee identified in Line Item 16 of the contract, which provides for payment of a "[o]ne time delivery fee for any purchased items, each, per delivery, per patient for patients of the TVHS, M[ountain] Home and Memphis VAs." Exhibit 1 at VA000048. TransOx interprets this language to allow it to charge a delivery fee of $40.92 for each delivery of contractor-purchased items to a patient. Appellant's Brief (May 7, 2025) at 17. Under TransOx's interpretation, if it delivers twelve contractor-purchased items to a VA outpatient, one during each monthly visit, over the course of a year, TransOx is entitled to payment of twelve delivery fees. The VA disagrees, arguing that "[t]he words 'one time' place a limitation on the delivery fees to be paid under Line Item 0016" and that the fee is "only to be paid if the delivery being made is a one-time or one-off type delivery." Respondent's Brief (May 7, 2025) at 5.

Consistent with our discussion above, we begin our contract interpretation analysis by looking at the plain language of the contract, without resorting to extrinsic evidence, to determine whether the contract's Line Item 16 delivery fee provision is ambiguous. *See M.A. Mortenson*, 363 F.3d at 1206. To do so, we must first identify what we can consider when evaluating the contract's plain language. In its brief, the VA asks us to begin our contract interpretation analysis by considering the low-numbered estimated quantities that were contained in the original solicitation, even though those estimates were not carried over into or included in the contract, as evidence of the intended scope of Line Item 16. Respondent's Brief at 12. Yet, the Court of Appeals for the Federal Circuit's decision in *KD1 Development, Inc. v. Johnson*, 495 F. App'x 84 (Fed. Cir. 2012), tells us that we cannot look to the solicitation in determining whether the plain language of the contract is ambiguous if the solicitation is not incorporated into the contract. In *KD1 Development*, the Court reversed a decision in which the Board, looking to the terms of a lease contract, had found the contract terms unambiguous when read in conjunction with the solicitation terms. On appeal to the Federal Circuit, the Government again cited to and relied upon the terms of the solicitation to show that the lease was not ambiguous. The Federal Circuit determined that, "[a]lthough the cited language from the solicitation supports [the agency's] interpretation of the lease, it is not clearly part of the lease entered into by the parties." *Id.* at 88. It found that, because the lease expressly incorporated by reference some parts of the solicitation but not the part upon which the Government was relying, the solicitation language to which the

Government cited was "extrinsic evidence [that could] not [be] considered when determining if the lease is ambiguous." *Id.*

Looking solely at the language contained in the contract itself, without reference to unincorporated portions of the solicitation, we see nothing to support the VA's position that the delivery fee in Line Item 16 is limited to "one-time or one-off type" deliveries of equipment separate and apart from TransOx's monthly visits to outpatients. As an initial matter, the VA repeatedly refers to how the fee in Line Item 16 is limited to the delivery of "equipment" that TransOx purchases, stating that the provision "focuses on the 'delivery of any equipment to a veteran.'" Respondent's Brief at 19. Yet, the actual contract language regarding Line Item 16 refers to "any purchased *items*," not "equipment." Exhibit 1 at VA000048. The VA's references to "equipment" come from the solicitation and, specifically, the VA's answer to a question during the procurement process from an offeror about the meaning of what was then labeled Line Item 17. There, the VA said that the one-time delivery fee line item was for "a one-time delivery of any equipment to a veteran." Exhibit 5 at VA000256. Yet, for reasons that are not explained in the record, when it issued the awarded contract, the VA unilaterally changed the language associated with Line Item 16 to something different than what was in the solicitation. This discrepancy between what the *solicitation* said and what the *contract* says reminds us of the distinction that the Federal Circuit in *KD1 Development* made about interpreting the actual contract language rather than solicitation language. The idea that Line Item 16 is limited to the delivery of equipment conflicts with the actual language that the VA included in the contract.[2]

The VA's main argument in its brief focuses on its belief that the "one time delivery fee" is only for "one-time or one-off type" deliveries. It argues that TransOx's interpretation of the provision as applying to each and every delivery of customer-purchased items to a VA

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[2] The VA also notes that, in the solicitation, the VA included a subheading for Line Item 17 (now Line Item 16) followed by two paragraphs talking about equipment that presumably, based on the paragraphs' placement beneath the Line Item 17 subheading, were tied to the solicitation's Line Item 17. Respondent's Brief at 3; *see* Exhibit 2 at VA000154. The language from those two paragraphs is included in the contract, but without the Line Item 17 subheading, which is referenced nowhere in the contract. Without the Line Item 17 subheading, there is no language in the two paragraphs that would tie them to what is now the contract's Line Item 16. Reading them, they seem untethered from, make no reference to, and seemingly have nothing to do with Line Item 16, particularly since they are now under a Line Item 1 subheading. *See* Exhibit 1 at VA000026-29. Again, looking solely to the language of the contract, there is nothing in it that limits Line Item 16 to *equipment* deliveries, expressly or implicitly.

outpatient, rather than just "one-time or one-off type deliver[ies]," makes the words "one time" in the phrase "one time delivery fee" meaningless. Respondent's Brief at 4-5, 18. It says that "[a] simple reading of the term 'one time delivery fee' reveals no ambiguity or confusion" and "is a fee associated with a one-time or one-off delivery." *Id.* at 18. It is true that contract language should be interpreted in a manner that gives meaning to all parts and leaves no superfluous language. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991). Nevertheless, the VA's interpretation of the contract language, which focuses on the words "one time delivery fee," leaves *other* parts of the Line Item 16 clause superfluous. The contract language associated with Line Item 16 allows for a "[o]ne time delivery fee for *any* purchased items, *each*, *per delivery*, *per patient*." Exhibit 1 at VA000048 (emphasis added). In arguing that Line Item 16 allows a delivery fee for only the *first* time that equipment is delivered to a patient outside of a routine monthly visit, the VA does not tell us how to deal with the language addressing "*any* purchased items" or the phrase "each, per delivery, per patient." The VA's interpretation would essentially require us to eliminate all language after the words "one time delivery fee" and to *add* a currently unstated limitation allowing the fee only outside the context of a monthly visit. That is not a proper way to interpret contract language. *See Gould*, 935 F.2d at 1274.

Although we cannot find any support for the VA's interpretation of the Line Item 16 provision, the VA has identified other statements in the contract that raise some questions about the reasonableness of TransOx's interpretation. First, the VA asks us to compare the Line Item 16 language with Line Item 14, which provides a set payment amount for "[d]elivery of government owned property, each, per visit, per patient for patients of the TVHS, Mt Home and Memphis VAs," Exhibit 1 at VA000048. Comparing that to Line Item 16's "[o]ne time delivery fee for any purchased items, each, per delivery, per patient for patients of the TVHS, Mt Home and Memphis VAs," *id.*, the VA notes the similarity of the two provisions, with the exception that Line Item 16 starts off with the words "one time" whereas Line Item 14 does not. Respondent's Brief at 21-22. The VA asserts that, because "delivery fees under Line Item 14 can be invoiced for each delivery," the addition of the words "one time" at the beginning of Line Item 16 must mean that there is a difference between Line Item 14 and Line Item 16. *Id.* at 22. We agree with the VA that, reading the contract as a whole with the goal of leaving no provisions superfluous, as we must, *see Gould*, 935 F.2d at 1274, the words "one time" in Line Item 16 must mean something. Yet, applying TransOx's interpretation, it is difficult to understand what is different about the delivery charges in Line Item 14 and the delivery fee in Line Item 16 and what the words "one time" in Line Item 16 are intended to add. TransOx has not proposed any basis for finding a difference and, in fact, asserts that Line Items 14 and 16 are essentially the same, *see* Appellant's Brief at 18-19, rendering the words "one time" in Line Item 16 superfluous. Although it is possible that a contract interpretation that leaves some language "superfluous" may not create an ambiguity, *see Mayer Construction Co.*, DOTCAB 1688, 1986 WL 19629

(Feb. 19, 1986), superfluous language is a factor that favors finding an ambiguity. *See Hol-Gar Manufacturing*, 351 F.2d at 979.

Next, the VA correctly notes that the estimated quantities of the Line Item 16 delivery fee in the contract are completely inconsistent with TransOx's current interpretation. In the contract, the Line Item 16 estimated quantity is 612 delivery fees for the base year. Exhibit 1 at VA000048. In its claim, which covers only four months within that base year, TransOx is seeking payment of 3251 delivery fees—a number that does not include numerous additional base year delivery fees that the VA has already paid and that, if that number is representative of the delivery fees across the entire base year, would mean a base year quantity of almost 10,000 delivery fees. Even at the time of contract award, TransOx would have been aware that, applying its interpretation of Line Item 16, the estimated quantity of 612 was inconsistent not only with how TransOx expected to charge Line Item 16 but also with the quantity estimates for other related work identified elsewhere in the contract. When addressing the disparity in estimated quantities and actual deliveries, TransOx does not argue that it did not understand at the time of contract award that the estimated quantities were low or were incompatible with its interpretation of how Line Item 16 could be charged. Instead, through its witness declarations, TransOx argues that the estimates are irrelevant to the interpretation issue because, in the witnesses' experience, "the VA's estimates for quantities on home oxygen delivery contracts are often inaccurate" and that they essentially ignored them when crafting TransOx's proposal. Schaeffer Declaration ¶ 10; *see* McLendon Declaration ¶ 10.

It is true, as TransOx notes in its brief, that the contract indicates that the quantity estimates "are estimates only" and that "the actual number of quantities required during the term of the contract may be more or less than the quantities indicated," Exhibit 1 at VA000045, but it is a stretch for TransOx to argue that, because its interpretation of Line Item 16 is reasonable, it was entitled to ignore a disparity of the magnitude here and not question whether its interpretation of what the VA intended in Line Item 16 was correct. Certainly, the low number quantity estimate for the "one-time delivery fee" suggested that the VA did not anticipate that *every* delivery that TransOx made to a VA outpatient would be billed as a Line Item 16 delivery fee. If the VA had anticipated the fee to apply to every delivery, the estimated quantity would have to have been in the thousands.

At the very least, the low quantity estimate and seemingly superfluous use of the words "one time" in Line Item 16 when they were not used in Line Item 14 raise a question about the reasonableness of TransOx's interpretation. Although we find the interpretation to be reasonable, that does not mean that the provisions are not ambiguous. Nevertheless, we can only find that the meaning of Line Item 16 is ambiguous if there is a second reasonable interpretation of the provision. As noted above, "both [parties'] interpretations

must fall within a 'zone of reasonableness'" when the contract is read as a whole. *Metric Constructors*, 169 F.3d at 751. Even if the low quantity estimate and the superfluousness of "one time" raise some concerns, the VA's proposed counter-interpretation of Line Item 16 is simply not supported in any way by the language of the contract. Without resorting to extrinsic evidence, the contract cannot be read to indicate that Line Item 16 is limited to equipment deliveries and, beyond that, to one-off-type deliveries. Accordingly, we do not have two competing interpretations that are both in the "zone of reasonableness." Given that the VA cannot support its interpretation of the contract without turning to and incorporating extrinsic evidence, we find that TransOx's interpretation of Line Item 16 is the only reasonable one presented and that TransOx is entitled to a delivery fee for any contractor-purchased items, "each, per delivery, per patient."

C. Even If Ambiguous, We Must Hold the Ambiguity Against the VA

Even assuming that the Line Item 16 contract language is ambiguous as to the meaning of the "one time delivery fee," we would hold that ambiguity against the VA, as the drafter of the contract language. Normally, as discussed above, if there is an ambiguity in the contract language, we turn to extrinsic evidence to assist in attempting to resolve the ambiguity. *Greco*, 852 F.2d at 560. Yet, the scope of the "one time delivery fee" in the original solicitation is even less clear than in the contract that the VA awarded. Originally, the solicitation identified the line item in a subheading, which was followed by two paragraphs that in no way explain anything about a delivery fee. *See* Exhibit 2 at VA000154. It was so confusing in the manner that it was presented that an offeror requested clarification about the fee, assuming that it was for equipment being delivered under another line item, but the VA responded that "this is for a one-time delivery of any equipment to a veteran." Exhibit 5 at VA000256. Despite TransOx's witness declarations attesting that its president and vice-president interpreted that language to support how they now read the contract, it is difficult to define exactly what the VA meant by "a one-time delivery" of "*any* equipment." The VA contracting officer's clarification did not clarify much at all.

In his declaration, the VA contracting officer tells us that, through his response during the procurement process to the offeror's question about what then-Line Item 17 meant, he believed that the awardee would be able to "invoice the VA one time only for a delivery fee that is applicable to the delivery of any type of equipment that is delivered to a veteran patient," apparently even if a physician issued a prescription for a change in equipment, and that the line item "is designed to cover one-time or one-off deliveries so that [the awardee] is able to invoice the VA for deliveries that are not included in any other Line Items." Rebuttal Declaration of Shawn M. Hendricks (May 12, 2025) ¶ 9. As noted above, declarations about the contracting officer's subjective intent as to the meaning of solicitation language is irrelevant to an objective interpretation of a provision. *Parcel 49C*, 00-2 BCA

at 153,406-07. In any event, the contracting officer's declaration explains the meaning of his answer using language that is *not* included in the written answer that he issued during the procurement process. It is too late, after contract award, to impose an interpretation on the contractor with words not in the solicitation (or an answer to a procurement process question) itself. The answer that was published is ambiguous, and the ambiguity was obvious.

Normally, if there is a patent ambiguity in a solicitation, an offeror must inquire of the Government to seek clarification before submitting its offer, *Interstate General*, 980 F.2d at 1434-35, something that TransOx did not do here. Even though another offeror had asked the VA to clarify the meaning of the line item at issue, TransOx was required to inquire again before submitting its offer because the VA's response to the clarification request plainly did not resolve the ambiguity. *See Community Heating & Plumbing Co. v. Kelso*, 987 F.2d 1575, 1580 (Fed. Cir. 1993). Even though TransOx's witnesses attest that they did not see an ambiguity after reviewing the VA's response to the other offeror's question, "the presence or absence of a patent ambiguity is not determined by the contractor's actual knowledge, but rather by what a reasonable contractor would have perceived in studying the bid packet." *Triax Pacific, Inc. v. West*, 130 F.3d 1469, 1475 (Fed. Cir. 1997). In normal circumstances, had we found the current contract language ambiguous, we might have had to find that, assuming that the VA's own interpretation was within the zone of reasonableness, TransOx assumed the risk of misinterpretation by failing to inquire before submitting its offer. *See Burnside-Ott Aviation*, 107 F.3d at 860.

In this case, though, it would not have mattered if TransOx had timely inquired about the meaning of the Line Item 16 solicitation language because, in the contract that the VA issued, it completely rewrote the clauses describing the Line Item 16 work. The language included in the awarded contract is different than what the solicitation said. The phrase "one time delivery fee for any purchased items, each, per delivery, per patient" was not in the solicitation, and the reference to "equipment" from the VA's answer to the offeror's solicitation question was not included in the contract. As a result, the ambiguities relating to Line Item 16 that were in the solicitation are not a part of the contract. Further, the record shows that, when the VA awarded the contract on February 28, 2024, it did so *without* requiring any signature from TransOx. *See* Exhibit 1 at VA000001. Because the VA considered the contract award complete when TransOx received the signed contract document, it was too late for TransOx to make any pre-award "inquiry" or clarification request. It did not know about the new language until the agreement was already in effect.[3]

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[3] Because the rule requiring an offeror to inquire about a patent ambiguity in a solicitation before submitting its offer is designed to put "all the bidders on an equal plane of understanding so that the bids are more likely to be truly comparable," *S.O.G. of Arkansas*

In such circumstances, TransOx's failure to inquire about ambiguous language that is not contained in the awarded contract does not shift to TransOx the risk of misinterpretation of new language that the VA added only when it made award. Instead, the VA, as drafter of the new Line Item 16 language, is responsible under the rule of *contra proferentem* for the ambiguity that was set forth for the first time in the awarded contract. Although the VA contracting officer attests that he intended the new language to mean something other than what TransOx thinks it means, the actual language in the contract does not reflect that intent. "To the extent that [the agency] thought it was getting a different agreement, it should have written that agreement rather than the one it did." *Computer Network Systems, Inc. v. General Services Administration*, GSBCA 11368, 93-3 BCA ¶ 26,233, at 130,527.

TransOx is entitled to recover its unpaid delivery fees under Line Item 16.

III. Legal Fees Incurred During Dispute Resolution Negotiations

TransOx seeks to recover $2362.50 in legal fees incurred "incident to contract administration or incurred in the furtherance of negotiation of the parties' disputes," which it asserts, in its certified claim, are expressly allowable costs under Federal Acquisition Regulation (FAR) 31.205-47 (48 CFR 31.205-47). Exhibit 18 at VA000333. As shown by the declarations that TransOx submitted and the record evidence of email exchanges between TransOx's legal counsel and the VA in the months before TransOx submitted its certified claim, TransOx was paying counsel to try to resolve the delivery fee dispute without having to engage in a formal disputes process under the Disputes clause, as reflected in the following email to the VA contracting officer from TransOx's counsel in September 2024:

> [W]e are writing to see if we could arrange a call with you and agency counsel to discuss the July invoice for Mountain Home and CLIN 0016 for all three stations (Mountain Home, TVHS, and Memphis). Thank you in advance for your time and consideration of this request. TransOx, Inc. values its relationship with the VA and we are hopeful that we can work with you and

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v. United States, 546 F.2d 367, 371 (Ct. Cl. 1976), it is not clear whether a duty of inquiry could apply to new ambiguities that the Government creates through the contract award that were not part of the solicitation. Had TransOx been required to sign the contract before it became effective, potentially giving it an opportunity to seek clarification of the meaning of the new Line Item 16 language before executing and being bound by the contract, we might have to consider that issue. Because the contract was effective without TransOx's signature, we need not resolve it.

> your team to resolve this issue and avoid the costly and time-consuming formal disputes process.

Exhibit 17 at VA000326.

"[P]ursuant to the FAR, claim preparation costs are categorically unallowable," *ELA Group, Inc. v. Department of Labor*, CBCA 8235, 24-1 BCA ¶ 38,702, at 188,180 (citing FAR 31.205-47(f)(5)), but "costs incurred in connection with . . . contract administration," including legal fees, "should ordinarily be recoverable because they normally 'benefit[ ] the contract purpose.'" *Bill Strong Enterprises, Inc. v. Shannon*, 49 F.3d 1541, 1549 (Fed. Cir. 1995) (quoting *Singer Co., Librascope Division v. United States*, 568 F.2d 695, 721 (Ct. Cl. 1977)), *overruled in part on other grounds*, *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1579-80 (Fed. Cir. 1995) (en banc). Contract administration costs "are presumptively allowable if they are also reasonable and allocable." *Id.* (citing FAR 31.204(a)). Costs that a contractor incurs during "a negotiation stage after the parties recognize a problem regarding the contract" during which "[t]he contractor and the [contracting officer] labor to settle the problem and avoid litigation" will generally, as long as the contractor has not begun preparing for a claim, be viewed as allowable contract administration costs. *Id.* at 1549-50.

The Federal Circuit once recognized that "the line between costs that are incidental to contract administration and costs that are incidental to prosecution of contract claims is rather indistinct." *Bill Strong Enterprises*, 49 F.3d at 1549. To assist in clarifying the distinction, the Court indicated that, "[i]n classifying a particular cost as either a contract administration cost or a cost incidental to the prosecution of a claim, [tribunals] should examine the objective reason why the contractor incurred the cost." *Id.* at 1550. "If a contractor incurred the cost for the genuine purpose of materially furthering the negotiation process," prior to preparation or submission of a claim, "such cost should normally be a contract administration cost allowable under FAR 31.205-33, even if negotiation eventually fails and a CDA claim is later submitted." *Id.* Nevertheless, "[t]he burden of proving the recoverability of its claimed contract administration costs," including that the costs were genuinely incurred to promote negotiation and settlement rather than a veiled means of preparing to prosecute a claim, is "on the contractor." *Yates-Desbuild Joint Venture v. Department of State*, CBCA 3350, et al., 17-1 BCA ¶ 36,870, at 179,711 (citing *Southwest Marine, Inc.*, DOT BCA 1665, 96-1 BCA ¶ 28,168, at 140,595).

Here, TransOx presented evidence, both through contemporaneous documentation and in a witness declaration, showing that it was working to negotiate a resolution to the delivery fee dispute without litigation and without the need to prepare and submit a CDA claim. The VA has not introduced any evidence conflicting with or disputing TransOx's presentation. TransOx has also supported its claim of $2362.50 with invoices quantifying the work that

counsel performed. In such circumstances, TransOx has established its entitlement to its contract administration costs totaling $2362.50.

IV. TransOx's Request for PPA Interest

TransOx seeks to recover $412.25 in PPA interest, which it asserts began running when it submitted its original invoices, which were then not paid,[4] and continued to accrue until TransOx submitted its certified claim on November 25, 2024. TransOx is not entitled to PPA interest.

"The PPA authorizes the payment of interest to contractors when the government is late in making payment for goods or services under a written contract." *Environmental Safety Consultants, Inc. v. United States*, 95 Fed. Cl. 77, 99 (2010), *appeal dismissed*, 459 F. App'x 907 (Fed. Cir. 2011). Yet, the PPA "does not require an interest penalty on a payment that" the Government declines to make "because of a dispute . . . over the amount of payment or compliance with the contract." 31 U.S.C. § 3907(c); *see WageWorks, Inc. v. Office of Personnel Management*, CBCA 6027, 22-1 BCA 38,000, at 184,547 (2021) ("[T]here is no interest penalty under the PPA where a contractor's request for payment is disputed by the Government."). "All that is required to raise a *bona fide* dispute concerning contract compliance is that the government's questions be raised in good faith. That a contractor may ultimately prevail on the merits does not defeat an otherwise proper payment withholding if there is such a good faith dispute." *Systems Management & Research Technologies Corp. v. Department of Energy*, CBCA 4068, 16-1 BCA ¶ 36,333, at 177,134 (quoting *Dick Pacific/GHEMM, JV*, ASBCA 55829, 08-2 BCA ¶ 33,937, at 167,942).

"Disputed contract payment amounts are subject to [CDA] interest, not [PPA] interest." *George Sollitt Construction Co. v. United States*, 64 Fed. Cl. 229, 304 (2005); *see* 31 U.S.C. § 3907(c) ("A claim related to the dispute, and interest payable for the period during which the dispute is being resolved, is subject to" the CDA.). Under the CDA, interest does not begin to accrue until the contracting officer receives a claim from the contractor. 41 U.S.C. § 7109. "[A]s a matter of law, any claim for PPA interest on [a] disputed amount . . . [prior to] the date on which the contracting officer received [the contractor's] certified claim . . . must be denied." *MCI Worldcom Communications, Inc. v. Social Security Administration*, GSBCA 16169-SSA, 04-2 BCA ¶ 32,689, at 161,761, *appeal*

[4] Interest under the PPA, when available, generally begins to run "on the day after the required payment date," 31 U.S.C. § 3902(b), not on the date that the contractor submitted its invoice. In light of our decision on TransOx's PPA interest claim, it is unnecessary to recalculate TransOx's claimed damages to account for that error.

dismissed sub nom, Barnhart v. MCI WORLDCOM Communications, Inc., 120 F. App'x 321 (Fed. Cir. 2005); *see Marut Testing & Inspection Services, Inc. v. General Services Administration*, GSBCA 15412, 02-2 BCA ¶ 31,945, at 157,824 (allowing CDA interest, running from the date that the contracting officer received the claim in dispute, but no PPA interest), *appeal dismissed*, 66 F. App'x 886 (Fed. Cir. 2003).

Because the VA in good faith disputed TransOx's entitlement to the requested delivery fees, TransOx cannot recover PPA interest for late payment on its invoices.

Decision

For the foregoing reasons, TransOx's appeal is **GRANTED IN PART**. The VA shall pay TransOx $133,030.92 in delivery fees and $2362.50 in contract administration costs, for a total of $135,393.42, plus CDA interest running from November 25, 2024 (the date that the VA contracting officer received TransOx's certified claim).

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge