



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: September 25, 2013

CBCA 1512, 1537

SYSTEMS INTEGRATION & MANAGEMENT, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Stuart W. Turner and Emma V. Broomfield of Arnold and Porter, LLP, Washington, DC, counsel for Appellant.

Nathan C. Guerrero, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS**, **BORWICK**, and **GOODMAN**

SOMERS, Board Judge.

These consolidated appeals arose under a blanket purchase agreement (BPA) between the General Services Administration (GSA) and Systems Integration & Management, Inc. (SIM). SIM alleges that GSA owes it \$1,058,722.23 under ten unpaid task orders.

After years of litigation, GSA moved to dismiss the appeals for lack of jurisdiction on the eve of trial. SIM opposed the motion. We held GSA's motion *sub judice* and proceeded to trial on the merits. The hearing proceeded as originally scheduled and the record has been closed. The record includes the pleadings, the appeal files, supplemental appeal files, GSA's motion to dismiss, SIM's response, hearing transcripts, post-hearing briefs and GSA's renewed motion to dismiss. For the reasons below, we deny GSA's motion to dismiss. The decision on the merits follows.

Findings of Fact on Jurisdiction

On September 30, 1998, GSA entered into a contract arrangement with the contractor identified as the contractor, “Systems Integration & Management, Inc.” The various task orders have identified the contractor as “Systems Integration & Management, Inc.” or “Systems Integration & Management, Incorporated.”

Mary Louise Denese Slaey, SIM’s Chief Executive Officer (CEO), submitted a certified claim to the GSA contracting officer on April 18, 2008, using the company name “Systems Integration and Management, Incorporated.” The contracting officer issued his final decision in response to SIM’s claim on December 18, 2008. SIM appealed the final decision to the Board on February 10, 2009, under the name “Systems Integration and Management, Inc.” This appeal is docketed as CBCA 1512. SIM filed a second claim with a GSA contracting officer on October 28, 2008. The contracting officer failed to respond to the claim or to issue a final decision. Consequently, SIM filed a notice of appeal, which this Board docketed on March 23, 2009, as CBCA 1537.

Shortly before trial, GSA discovered that SIM, a Delaware corporation, was not operating as a corporation in good standing. Apparently, effective March 1, 1990, SIM’s corporate charter became “void” pursuant to section 510 of Title 8 of the Delaware Code, based upon SIM’s failure to pay the required franchise tax or to file a required annual report. As a “void” corporation, all of SIM’s corporate powers were “declared inoperative.” *See* DEL. CODE ANN. tit.8, § 510 (2013). On May 3, 2012, GSA filed a motion to dismiss, asserting that SIM lacked the capacity to contract or sue under Delaware law.

In response to the motion, SIM procured a renewal and revival of its Certificate of Corporation pursuant to section 312 of Title 8 of the Delaware Code. This action caused Delaware to update SIM’s status on its online records system to indicate the company’s “good standing” effective May 4, 2012. Also, SIM discovered that during the period its corporate status had been “void,” another corporate entity had registered with SIM’s original name. Therefore, appellant changed its name to “Systems Integration and IT Management Corporation” pursuant to section 312(f) of Title 8 of the Delaware Code.

At the hearing, GSA renewed its motion to dismiss. GSA contends that the Board lacks jurisdiction to entertain the appeals because, as a void corporation, SIM lacked the capacity to contract with the Government, causing the contract at issue to be *void ab initio*. Second, according to GSA, because SIM was a void corporation at the time it submitted its claim, it could not legally submit a claim in its name, nor could any individual act on SIM’s behalf to certify the claim. That made SIM’s actual claim invalid; thus, any final decision addressing the claim must be a nullity. Finally, GSA argues that even if the renewal of

SIM's corporate status serves to retroactively validate the actions of SIM under Delaware law, such action does not also serve to retroactively validate an otherwise invalid contracting officer's final decision under the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (Supp. IV 2011).

Discussion on Jurisdiction

Law applicable to Contractor Status

Under the CDA, a contractor – that is, a party to the contract other than the Government -- may submit a contractor claim. 41 U.S.C. §§ 7101(7), 7103(a)(1). Where the contractor is a corporation, “the capacity of the corporation to maintain an action is determined by the laws of the state under which it was organized.” *TAS Group, Inc. v. Department of Justice*, CBCA 52, 07-2 BCA ¶ 33,630, at 166,567; Fed. R. Civ. P. 17(b)(2) (capacity of a corporation determined by the law under which the corporation was organized). Accordingly, the applicable law concerning the contractor's corporate status is the law of the State of Delaware.

Under Delaware law, a corporation whose certificate of incorporation has become forfeited or void “may at any time procure an extension, restoration, renewal or revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto.” DEL. CODE ANN. tit.8, § 312(b). A corporation may revive a certificate of incorporation by “executing, acknowledging and filing a certificate” in accordance with section 103 of Title 8. Once the corporation accomplishes this, Delaware law says:

[T]he corporation shall be renewed and revived with the same force and effect as if its certificate of incorporation had not been forfeited or void pursuant to this title, or had not expired by limitation. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its certificate of incorporation by the corporation, its officers and agents during the time when its certificate of incorporation was forfeited or void pursuant to this title, or after its expiration by limitation, with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect.

DEL. CODE ANN. tit.8, § 312(e).

As noted above, GSA's argument is premised upon its theory that validity must be determined at the time of the action. The reasoning is as follows: Since SIM's corporate charter was "void" when it submitted the claim, the claim, at least at the time of submission, is invalid. A contracting officer cannot act upon an invalid claim. Accordingly, the final decision is a nullity. Without a valid claim or final decision, GSA asserts, the Board lacks subject matter jurisdiction under the CDA. GSA posits that a void corporation cannot enter into a contract with the Government, perform the contract, submit a certified claim, and file an appeal. Therefore, we may not be able to entertain SIM's claim.

Case law mandates that we reject GSA's argument. As explained below, because SIM renewed and revived its certificate of incorporation, Delaware law provides that the renewal has the effect of retroactively restoring all corporate powers and validating all corporate acts. The "void" corporate actions disappear. All actions are now considered to have been performed by a corporation in good standing.

While the notion that an invalid action can simply metamorphose into a valid action seems counterintuitive, this is precisely what happens under Delaware law. The statute is clear: once the corporation has been reinstated, all actions are deemed to have been done and performed "*with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect.*" *Id.* (emphasis added); *V.E.C. Corp. of Delaware v. Hilliard*, 2011 U.S. Dist. LEXIS 152759, at *13-19 (S.D.N.Y. Dec. 13, 2011). As the court in *Wax v. Riverview Cemetery Co.* explains:

Under our taxing statute we think that a corporation which has been proclaimed for non-payment of taxes is not completely dead. It is in a state of coma from which it can be easily resuscitated, but until this is done its powers as a corporation are inoperative "[S]o long as a corporation may be reinstated by the payment of delinquent fees and have validated all of its acts that were done while its powers were suspended, the corporation is not dead. Its powers are only in suspension."

24 A.2d 431, 436-37 (Del. Super. 1942), citing *Watts v. Liberty Royalties Corp.*, 106 F.2d 941, 944 (10th Cir. 1939) (construing Delaware statute.)

Thus, "a Delaware corporation is not dead for all purposes following forfeiture of its charter." *Frederic G. Krapf & Son, Inc., v. Gorson*, 243 A.2d 713, 715 (Del. 1968). Upon reinstatement of the corporation pursuant to section 312(e), it regains the ability to prosecute actions on its behalf and any action taken while its charter was voided is ratified. *Id.* "[T]he performance of corporate acts following forfeiture is wrongful at the time but the later reinstatement of the charter validates the corporate acts." (citations omitted); *see also*

Backyard Wrestling, Inc. v. Pro-Active Entertainment Group, Inc., 398 F. App'x 299 (9th Cir. 2010) (recognizing a “once-void and now-renewed” corporation’s ability to commence and then maintain an action); *Darley Liquor Mart, Inc. v. Bechtel*, 1982 Del. Super. LEXIS 784, *1-2, 9 (Del. Super. Apr. 22, 1982) (“[R]einstatement of the certificate of plaintiff corporation after the action was filed validated the act of filing this action.”). When the corporate charter is renewed, “it is restored to its old franchises. It changes from a corporation with limited powers to be used only in course of winding up, to a corporation reinvigorated by the State with all of its former franchises.” *McKee v. Standard Minerals Corp.*, 156 A. 193 (Del. Ch. 1931).

Application of state law to determine the impact of reinstatement of corporate status during litigation has been applied in contract cases as well. *See Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1307 (Fed. Cir. 2003) (plaintiff corporation claimed its patent rights under a contract executed at a time when it was administratively dissolved; court held that “although under [Florida statute] a corporation loses its capacity to sue if it fails to file an annual report, once it is administratively dissolved, somewhat paradoxically it regains capacity to sue [under second statute]” upon filing of report); *Joseph A. Holpuch Co. v. United States*, 58 F. Supp. 560, 563-64 (Ct. Cl. 1945) (holding that a corporate plaintiff which filed for breach of contract when administratively dissolved and subsequently was reinstated had capacity to sue under Illinois law, stating that “it was the purpose of this decree vacating the dissolution decree to give validity to all acts done in the meantime and hence, we conclude that plaintiff can maintain an action for the breach of a contract entered into between the dates of the two decrees”); *Stock Pot Restaurant, Inc. v. Stockpot, Inc.*, 737 F.2d 1576 (Fed. Cir. 1984) (holding that a void corporation at the time of the lawsuit could continue the action upon reinstatement under a similar Massachusetts law); *International Crane Co.*, ASBCA 49604, 00-1 BCA ¶ 30,624 (1999) (denying motion to dismiss for lack of standing as corporate entity under Maryland law where appellant lost right to conduct business as a Maryland corporation after submitting but before certifying claim to contracting officer); *Fre'ence Manufacturing Co.*, ASBCA 46233, *et al.*, 95-2 BCA ¶ 27,802.

In an attempt to escape the protective corporate shield provided by Delaware state law, the Government focuses on the jurisdictional requirements of the CDA. The Government contends that the CDA requires a valid contract between the contractor and a government agency, a valid claim, a valid final decision, and a valid appeal as a predicate to this Board’s jurisdiction. The validity of these elements must be established at the time the action occurs, the Government says. The Government argues that “[e]ven if the May 4, 2012 renewal of SIM’s corporate status by the Delaware Secretary of State can be interpreted to retroactively validate the actions of SIM, such as submission of the claim and the appeal to the Board, jurisdiction will simply not exist where there is no valid contracting officer’s final decision

upon which the appeal can be based. . . . [T]he validity of a contracting officer's final decision is determined at the time it is issued and depends on the validity of the contractor's claim." Respondent's Post-Hearing Brief at 42-43. Ultimately, the Government proposes, the validity of the claim and the final decision can only be determined by reference to federal law, not state law. To find otherwise would destroy the body of law governing federal contracts.

First, the Government points to the limited waiver of sovereign immunity under the CDA, *see, e.g., United States v. Seckinger*, 397 U.S. 203 (1970). It says that this limited waiver precludes the issuance of a valid final decision when presented with an invalid CDA claim, citing *Hillcrest Aircraft Co. v. Department of Agriculture*, CBCA 2233, 11-1 BCA ¶ 34,678, at 170,820 (discussing certification requirements) and *Case, Inc. v. United States*, 88 F.3d 1004, 1009 (Fed. Cir. 1996) (*citing Ball, Ball and Brosamer, Inc. v. United States*, 878 F.2d 1426 (Fed. Cir. 1989)), among others.

To support its position that the Board should find the claim and final decision invalid, the Government cites to *General Chemical Services, Inc.*, B-241595, 91-1 CPD ¶ 94 (Jan. 30, 1992). In that case, the General Accounting Office (GAO) addressed an analogous situation to the case at hand. A bidder for a government contract had lost its Delaware corporate charter at the time it submitted its bid. The bidder renewed its corporate charter after submitting the bid and then asserted before GAO that the Government had to treat its bid as retroactively valid and therefore award it the contract. GAO held that "we do not believe that a state statute that provides for retroactive reinstatement of a corporation can supersede a federal contracting officer's need to make contract award decisions on the basis of information that is current at the time of decision making." GAO premised this determination upon its interpretation of the seminal case of *Krapf v. Gorson*. GAO disagreed that the case stood "for the proposition that a corporate form of a corporation with a revoked charter survives for bidding purposes." Rather, GAO concluded that *Krapf* should be limited to determining creditor's rights and had no relevance in the bidding process.

GAO's interpretation of *Krapf* is an outlier. Courts have consistently interpreted *Krapf* to stand for the proposition that, under Delaware law, where a corporation is void but then renewed, it is as though the corporation was never void, and the corporation regains all of its previous rights, including the capacity to sue. *See, e.g., Backyard Wrestling, Inc.*, 398 F. App'x 299 (9th Cir. 2010); *Parker v. Cardiac Science, Inc.*, 2006 WL 3445218 (E.D. Mich.); *Chestnut Hill Plaza Holdings Corp. v. Parkway Cleaners, Inc.*, 2011 Del. Super. LEXIS 197 (Del. Super. May 17, 2011); *Darley Liquor Mart, Inc. v. Bechtel*, 1982 Del. Super. LEXIS 784 (Del. Super. Ct. April 22, 1982), *citing Harned v. Beacon Hill Real Estate Co.*, 84 A. 229 (Del. 1912); *Townsend v. Delaware Glue Co.*,

103 A. 576 (Del. Ch. 1918); *Wax v. Riverview Cemetery Co.*, 24 A.2d 431 (Del. Super. 1942).

In addition, under similar facts, other GAO decisions have upheld the award of a contract to a corporation which, at the time of submission of proposals and award, had its corporate charter revoked due to nonpayment of taxes. *See, e.g., Forbes Aviation*, B-248056, 92-2 CPD ¶ 58, at 5, citing *Triad Research, Inc.*, B-225793, 87-2 CPD ¶ 16 (other citations omitted). In such cases, GAO noted that state law retroactively reinstated corporate status, validating all corporate acts taken while “void.” *Id.* at 5. Under those circumstances, the entity that had been awarded the contract would be legally bound to perform the contract and would be unable to assert lack of capacity to avoid acceptance of its offer upon the agency’s post-award discovery of its forfeited articles of incorporation. *Id.* at 6.

In cases involving a corporation in which the cause of action is based upon a federal law other than the CDA, courts have not hesitated to apply state substantive rules governing corporations to resolve the case. With regard to the common law and federal law jurisdiction as relates to a dissolved corporation, the United States Supreme Court held:

It is well settled that at common law and in the federal jurisdiction a corporation which has been dissolved is as if it did not exist, and the result of the dissolution cannot be distinguished from the death of natural person in its effect. (citations omitted) . . . But corporations exist for specific purposes, and only by legislative act, so that if the life of the corporation is to continue even only for litigating purposes it is necessary that there should be some statutory authorization for the prolongation. The matter is really not procedural or controlled by the rules of the court in which the litigation pends. It concerns the fundamental law of the corporation enacted by the state which brought the corporation into being.

Oklahoma Natural Gas Co. v. Oklahoma, 273 U.S. 257, 259-60 (1927). *Also see Hanna v. Plumer*, 380 U.S. 460, 465 (1965) (holding, consistent with *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), and the Rules Enabling Act, 28 U.S.C. § 2072, that federal courts are to apply federal procedural law and state substantive law); *Maternally Yours, Inc. v. Your Maternity Shop, Inc.*, 234 F.2d 538, 540 n.1 (2^d Cir. 1956) (noting that the *Erie* doctrine applies regardless of the ground for federal jurisdiction); *United States v. Safeway Stores, Inc.*, 140 F.2d 834 (10th Cir. 1944) (holding that where corporations organized under the laws of Texas, California, Delaware, or Nevada have been dissolved in accordance with the laws of the respective states prior to return of criminal indictment, the dissolved corporations could not be prosecuted); *Velocity Micro, Inc. v. Edge Interactive Media, Inc.*, 2008 WL 4952605 (E.D. Va. Nov. 7, 2008) (finding jurisdiction in a case where the

corporation was suspended at the time of filing because plaintiff obtained a certificate of revivor. Under California law, such a certificate retroactively validates otherwise invalid proceedings undertaken by a suspended corporation).

In this case, Delaware law permits a “void” corporation to revive its corporate status and proceed anew as if it had never been in a coma. Thus, we must find that SIM, having properly revived its corporate state under Delaware law, is deemed to have been a corporation in good standing when it entered the contract with the United States, submitted its certified claim, and filed this appeal. The Government’s renewed motion to dismiss is denied.

Jurisdictional Issue #2 - Impact of Change of Corporate Name

On the final day of trial, the presiding judge asked the parties to address a second jurisdictional issue. Apparently, SIM initially registered under the name “Systems Integration and Management Corporation” in 1986. The contract vehicle between SIM and the GSA identifies SIM as “Systems Integration & Management, Inc.” On various task orders, SIM is also identified as “Systems Integration & Management Inc.” or “Systems Integration and Management, Incorporated.” However, when the Delaware Secretary of State revived SIM’s corporate charter on May 4, 2012, SIM had to adopt a different name, because during the time of its lapsed corporate status, another entity took SIM’s original corporate name. SIM is now chartered under the name “Systems Integration and IT Management Corporation.”

As to the issue of the change of corporate name, Delaware law contemplates the situation in which a second corporation adopted the same name as that of the first corporation whose certificate of incorporation had become void. Pursuant to DEL. CODE ANN. tit.8, § 312(f):

[I]n such case the corporation to be renewed or revived shall not be renewed under the same name which it bore when its certificate of incorporation became forfeited or void pursuant to this title, or expired but shall adopt or be renewed under some other name and in such case the certificate to be filed under the provisions of this section shall set forth the name borne by the corporation at the time its certificate of incorporation became forfeited or void pursuant to this title, or expired and the new name under which the corporation is to be renewed or revived.

With respect to the incorrect renditions of the corporate name on the contract documents, the task orders, and the submission of the claim and appeals, this misnomer does

not invalidate the contract. *See, e.g., Charles G. Taylor & Sons, Inc. v. Brentwood Const. Co.*, 189 A.2d 414, 419 (Del. Super. 1963) (“As a general rule it is not essential that a corporation contract in its legal corporate name. . . . Accordingly, a corporation may, as a general rule, in the absence of a statutory prohibition, contract under an assumed name or a name other than its legal one, provided the other party is not thereby prejudiced or injured.”). Courts look to the intent of the parties, and a misnomer in a contract is generally not material unless it affects the very nature of the contract or the misrepresentation somehow contributed to the decision to award the contract. *Dennis Berlin*, ASBCA 51919, et al., 00-2 BCA ¶ 31,096, at 153,567 (“A misrepresentation of identity by one party to a contract does not prevent the formation of a contract unless it affects the “very nature” or the “character or essential terms” of the proposed contract.”) (citing *Restatement (Second) of Contracts* § 163 and *Comment a* (1981)).

Here, the different names used by SIM in the course of conducting business in no way affected the “nature, character, and essential terms” of the basic ordering agreement and task orders, nor did it have any effect on the intent of the parties. The Government understood who would be performing the work. Despite the fact that SIM used variations of its name, this, in and of itself, does not invalidate the contract or undermine jurisdiction. *See Plum Run, Inc.*, ASBCA 46091, 97-1 BCA ¶ 28,770 (finding jurisdiction where appellant had done business under several names).

Findings of Facts on the Merits

Background

On September 30, 1998, the parties entered into a basic ordering agreement (BOA) in which SIM agreed to provide “Information Technology (IT) efforts for GSA and all of its Operating Administrations, other government agencies including state/local government entities, and certain quasi-governmental entities.” SIM would provide these services pursuant to task orders issued by a GSA contracting officer. “Agencies may use written orders, EDI orders, blanket purchase orders, individual purchase orders, or task orders for ordering services” under the BOA.

The BOA listed skill categories and labor rates to be applied for services purchased under the task orders. The process for invoicing for these charges was clearly set forth in the BOA. The BOA required that SIM submit invoices directly to GSA as soon as possible after completion of the work. SIM states that, during the first year of performance, it submitted timesheets at the same time it submitted invoices. According to SIM, GSA changed that process and instructed SIM to submit invoices that included a labor certification on the face of the invoice instead of submitting timesheets.

SIM says that GSA instructed it to submit its invoices to GSA's Region 2 office on a monthly basis, except for Coast Guard invoices, which would be submitted directly to the Coast Guard. For those invoices submitted to Region 2, SIM explains that it understood that GSA would facilitate obtaining signatures from the client agencies before processing the invoices for payment. GSA did not send SIM a copy of the signed invoices. If questions arose concerning charges in an invoice, SIM would work with GSA to resolve any issues directly. SIM states that GSA paid hundreds of invoices submitted for payment. Conversely, GSA disputes that this procedure governed the submission of invoices, pointing to the language of the various task orders. No one disputes, however, that over the life of the BOA, GSA issued over thirty task orders to SIM and paid SIM for approximately 250 of the roughly 300 monthly invoices submitted.

In 2008, SIM submitted two certified claims to GSA, seeking payment for the amount charged in the unpaid invoices. The contracting officer did not issue a final decision on the first claim. In the final decision on the second claim, and as the contracting officer later testified during the hearing, GSA rejected the claim for unpaid invoices because there was no evidence that SIM had submitted the invoices timely, or that the invoices contained adequate supporting data. By contrast, SIM's chief executive officer testified that the invoices submitted as part of its certified claim included supporting data.

The invoices at issue arose from separate task orders. Each task order and associated invoices will be discussed separately below:

Task Order #02MT21050 - Picatinny Arsenal

In December 2000, GSA awarded SIM task order no. 02MT21050 for work for the U.S. Army at Picatinny Arsenal in New Jersey. The initial period of performance under this task order was February 9, 2001, through December 31, 2001. The period was later extended through March 31, 2002.

The statement of work (SOW) for the Picatinny task order (which is similar to the other task orders at issue here) detailed procedures for payment for the work performed as follows:

Billing and payment shall be accomplished in accordance with the contract. **The Contractor shall have the invoice package CERTIFIED by the client representative.** The invoice package is to include the actual contractor's invoice and the signed labor certification associated with the invoice. The Contractor's invoice shall be for one month. The Contractor may invoice only for hours, travel and/or unique services ordered by GSA and actually used in

direct support of the Client Representative's project. **Each invoice submitted for payment shall be accompanied by a copy of the labor certification, signed and dated by the client representative, accepting the covered services.** Failure to comply with the procedures outlined above, will result in your payment being delayed.

(emphasis in original). The SOW required SIM to submit the original invoice to the GSA finance office in Fort Worth, Texas, and to submit monthly progress reports to the client representative and to GSA. In conjunction with the submission of each monthly progress report, SIM was required to scan the signed labor certification and include that as an attachment.

At issue for this task order are two invoices, Invoice No. 2002-0317 (\$33,464.70, for period of performance February 1, 2002, through February 28, 2002) and Invoice No. 2002 0422 (\$24,416.50, for period March 1 through March 31, 2002). SIM contends that it submitted both invoices with supporting employee timesheets, certified by the client representative. The client representative for this task order was Freddy Sanchez.

SIM states that GSA instructed it to submit unsigned invoices by facsimile to the GSA Region 2 office in order to obtain the certifications required under the SOW. GSA would then present the unsigned invoices to the client representative, who would compare the hours invoiced against the hours listed on the timesheets in his possession. If the hours matched, the client representative would sign the invoice.

The client representative, Mr. Sanchez, signed some of SIM's invoices, noting in his testimony as follows:

I remember they gave me their time sheets on a weekly basis. I signed them. The problem was that I would see those time sheets like maybe six months later on an cumulated [sic] invoice and that's when I raised the flag why are the billings so late.

On cross-examination, however, Mr. Sanchez conceded that his overbilling concern did not relate to the invoices at question in this appeal.

Mr. Sanchez testified that if an invoice did not contain his signature, it must not have been presented to him. None of the invoices at issue in this case contain Mr. Sanchez's

signature.¹ However, Mr. Sanchez certified the underlying employee timesheets, including one for an employee who worked for a subcontractor, and testified that SIM successfully performed all work ordered under this task order. GSA did not dispute the invoices at the time of submission, but it has not paid for the outstanding invoices.

Task Order No. 02FG21076 - Benet Laboratories (administrative support services)

GSA awarded task order no. 02FG21076 to SIM for administrative support at the U.S. Army's Benet Laboratories (Benet Labs) at Watervliet Arsenal in New York. The statement of work for this task order described the period of performance as October 1, 2000, to September 30, 2001, and stated that the work would be charged on a time and materials basis. The statement of work did not contemplate the necessity for travel. The SOW designated Larry Marten as the client representative at Benet Labs and Floyd Griffith as the GSA contracting officer's representative.

The SOW provided that the invoice package must be certified by the client representative. Mr. Marten authorized Al Nebolini to sign SIM timesheets and certify SIM invoices. SIM asserts that GSA instructed it to submit the unsigned invoices to the GSA Region 2 office. GSA would then fax the unsigned invoices to Benet Labs to obtain the client's certification. After signing a SIM invoice, SIM states, Benet Labs would fax the signed invoice to GSA for payment processing. GSA paid SIM under multiple invoices submitted under this procedure. On occasion, GSA paid SIM for invoices that had not been signed by the client.

SIM proposed to increase labor rates for various employees for the second year of performance and Mr. Marten accepted the increases. During the second year of performance, Benet Labs approved and GSA paid invoices using the negotiated year-two rates.

SIM submitted invoices nos. 2001-0921A (\$11,083.47) and 2002-0416 (\$3,557.38) for services rendered during the second year of performance. These invoices charged for labor hours, travel, and other expenses, including a charge for training and a charge for a performance award. SIM initially submitted these invoices in the month following the period of performance and resubmitted them in March 2003.

GSA did not dispute the invoices at the time of submission, but it has not paid these invoices. GSA now contends that the invoices are unsigned and charge for services that were

¹ SIM asserts that the invoices in the claim are unsigned because they are SIM's file copies of the invoices it submitted to GSA in order for GSA to facilitate signature.

not performed. In particular, as to charges for travel, GSA states that it rejected the invoice due to lack of supporting documentation and authorization for travel. SIM responds to GSA's allegations, pointing out that with the exception of eight hours charged for the work of one employee, client representatives signed time sheets supporting the hours charged on the invoices.

Task Order 02FG21077 - Benet Laboratories (software maintenance services)

GSA awarded SIM a time and materials task order for software maintenance services at Benet Labs, to be performed from October 1, 2000, to September 30, 2001. As with the other task orders, SIM submitted invoices for services and expenses on a monthly basis, and Benet Labs would sign the invoice and then forward it to GSA for payment processing. GSA paid SIM under multiple invoices, some signed, some unsigned. GSA also paid for some invoices that included travel expenses.

At issue is invoice no. 2002-0417,² generated on April 15, 2002, for charges incurred during the period of performance from March 1, 2002, through March 31, 2002 in the amount of \$34,225.63. SIM has not been paid for this invoice. While GSA did not dispute the invoice at the time of submission, it disputes the invoice now because no client representative signature appears on the invoice and the invoice does not contain any supporting documentation.

Task Order No. 02FG21078 - Benet Laboratories (software engineering support services)

In October 2000, GSA awarded a time and materials task order to SIM to provide software engineering support at Benet Labs. Using the same procedure as the other Benet Labs task orders, SIM submitted invoice no. 2002-0412, in the amount of \$34,517.86, which included charges for travel as well as other costs.³ Although GSA did not reject the invoice at the time it was submitted, GSA has not paid this invoice. GSA contends that the invoice did not contain a client representative signature and the supporting documentation did not provide sufficient documentation to support the amounts claimed.

² Initially, SIM's certified claim sought payment for another invoice under this task order. Ultimately, prior to hearing, SIM withdrew invoices under the various task orders from its claim: invoice nos. 2001-0952, 2001-0624, 2002-0707, 2003-0424, 2002-0503, and 2003-0531.

³ SIM no longer seeks payment for invoice no. 2002-0707.

Task Order #02FG21066 - Benet Laboratories (acquisition support related to weapons testing)

In August 2000, GSA issued a firm fixed price task order to SIM for acquisition support related to weapons testing at Benet Labs. The SOW designated Mr. Marten as the client representative and Mr. Griffith as the contracting officer's technical representative for this task order.

SIM submitted three progress payment invoices under this task order. The first invoice, no. 2000-0823, dated September 22, 2000, sought payment of \$60,870. SIM submitted two subsequent invoices to GSA, invoice no. 2000-1017 for \$105,583.92 for progress payment two, and invoice no. 2001-0218 for \$53,900 for progress payment three. The first invoice did not contain a labor certification or client representative signature. The second and third invoices did, with the second signed by Mr. Marten and the third signed by Mr. Griffith.

Although no client representative signature appears on the invoice for progress payment one, on June 12, 2002, Mr. Marten confirmed in an email message to SIM that "Benet Labs has approved payments to SIM of all invoices submitted for the services performed during their contract period." SIM believes that Mr. Marten's email message confirms that SIM performed the services charged in the invoice for progress payment one, and that GSA should pay the amount charged. GSA contends that the second invoice, dated February 12, 2001, appears to have Mr. Griffith's signature certifying the accomplishments of the tasks. GSA asserts that Mr. Griffith, a GSA employee, could not sign as a client representative for the Army.

GSA paid SIM as charged for invoices two and three. GSA did not reject invoice one at the time, nor did it pay SIM for invoice one. Thus, a charge of \$60,870 remains outstanding on this task order.

Task Order No. 02WP69001 (services to U.S. Coast Guard)

In November 2000, GSA issued a task order for SIM to provide web-based application support to the U.S. Coast Guard. The SOW described the scope of work to be performed under the task order as providing "for a set of services related to information and engineering technology (IT) analysis, design, development, test, integration, documentation, implementation and management services." Again, like the SOWs described previously, in order for SIM to be paid for its services, it was required to ensure that the "invoice package" was certified by the client representative. Here, the SOW also stated specifically that: "The contractor may invoice only for the hours, travel and/or unique services ordered by GSA and

actually used in direct support of the client representative's project." However, the SOW did not require the submission of timesheets, nor did it limit the hours a SIM employee could work.

The task order identified James Cash as the client representative for the Coast Guard; he was later replaced by Commander Brooks Minnick. Wanda Patterson was the GSA contracting officer's technical representative. Because SIM's CEO, Ms. Slaey, worked on site at U.S. Coast Guard headquarters, she would hand deliver SIM's invoices to the Coast Guard for signature rather than faxing them to GSA Region 2 to obtain signatures. GSA paid SIM for invoices submitted under this procedure up to the July 2001 invoice.

For reasons subject to dispute by the parties, from September 2001 through August 2003, SIM did not submit invoices to GSA. SIM says that it submitted invoices to the Coast Guard for signature on a monthly basis, and that the Coast Guard accepted the invoices and signed the required labor certifications. With the exception of one invoice (invoice no. 2003-1029), each invoice was supported by timesheets. SIM also contends that each unpaid invoice at issue contained the signature of one of three client representatives, either Commander Minnick, Ms. Diedrich, or Ms. King. The final invoice covered close-out costs as negotiated by the parties. Commander Minnick approved the final invoice.

In July 2003, the Coast Guard faxed to GSA copies of all SIM invoices that were outstanding at that time. The Coast Guard resubmitted the outstanding invoices to GSA on October 2, 2003. Again, these invoices contained signatures from a client representative. Later, on December 22, 2003, SIM's attorney provided to GSA further documentation supporting SIM's Coast Guard invoices, including a memorandum documenting the work performed by SIM under the task order. At the time of submission, GSA did not reject the twenty-five outstanding invoices, totaling \$538,755.44 in charges. GSA now asserts that two of the invoices, specifically the invoice for the September 1, 2001, period of performance and the "close out" invoice, were not submitted on a timely basis. GSA does not specifically address the other outstanding invoices.

Task Order No. 02FG47058 (services to the GSA Federal Technology Service)

In December 2000, GSA awarded SIM task order no. 02FG47058 for the provision of computer operations support for GSA. This task order, a firm fixed price task order of \$115,114, called for the work to be performed from January 2, 2001, through December 31, 2001. The SOW included a payment provision similar to those detailed above, requiring the preparation of an invoice package with hours worked as certified by the client representative. The SOW designated Floyd Griffith as the client representative at GSA, with Wanda Patterson identified as the alternate. SIM invoiced GSA for the work on a monthly basis for

progress payments based on estimated labor hours provided in the month covered by the invoice. GSA paid SIM for five such progress payments.

SIM explains that it generated invoice no. 2002-0145 on January 10, 2002, for the December 2001 progress payment. When it did not receive payment, it issued a final invoice on May 8, 2002, which included all outstanding amounts still owing. The May 8, 2002, invoice for the firm fixed price of \$115,114 applied a credit based upon GSA's payment of seven progress payments, which resulted in the final invoice amount of \$48,537.60.

On March 12, 2002, after performance had ended, GSA unilaterally issued Modification 1, decreasing the value of the task order from \$115,144 to \$53,985.04. GSA also modified the task order by changing it from a firm fixed price order to a time and materials task order. GSA requested that SIM continue performance for six weeks on a time and materials basis. On February 1, 2002, SIM issued invoice no. 2002-0212 for actual labor expended from January 1, 2002, through January 31, 2002. GSA extended the modification with a period of performance ending February 13, 2002. Consequently, SIM submitted a revised invoice 2002-0212 to cover the entire period. SIM seeks payment of \$7,440 for that invoice.

While GSA never rejected these invoices at the time of submission, it contends now that GSA did not sign the invoices as required by the task order. SIM points out that GSA failed to explain how it could properly convert the task order from a firm fixed price task order to a time and materials task order after SIM had completed the work. SIM has not been paid for the remaining invoices under this task order.

Task Order TP0001974 - Procurement Office Support for Federal Telecommunications Services (FTS), Fort Monmouth

On November 2, 2001, GSA awarded task order TP0001974 to SIM on a time and materials basis with a period of performance of October 1, 2001, through December 31, 2001, for procurement office support for GSA FTS Region 2 at Fort Monmouth. GSA later extended the period of performance through January 31, 2002. The total amount allocated to this task order reached \$257,275.60 after contract modification.

GSA did not issue a separate SOW, but instead used GSA Form 300. Form 300 contained terms and conditions that do not require the submission of an invoice or labor certification. SIM contends that, pursuant to GSA's instructions, it submitted invoices to GSA Region 2 by fax. Later, after GSA and SIM engaged in negotiations related to the invoices, SIM revised labor hours, removed some travel expenses, and submitted revised invoices. SIM contends that it has not been paid for revised invoice nos. 2002-0130

(\$65,036.88), 2002-0143 (\$55,546.36), and 2002-0211 (\$55,234.80). SIM withdrew invoice no. 2002-0503 from its claim. SIM asserts that it supported each invoice with timesheets.

GSA disputes the accuracy of the invoices, contending that the invoices charged for work performed outside the contract performance period. SIM notes that GSA did not reject the invoices at the time of submission and that the invoices remain unpaid.

Task Order 02FG47159 - IT Support Services for GSA FTS, Region 2

GSA awarded SIM task order no. 02FG47159 on a time and materials basis for the provision of IT support services to the GSA FTS in Region 2 for a period of performance from January 16, 2001, to September 30, 2001. The contract documents did not contain invoicing procedures.

SIM submitted unsigned invoice no. 2001-0621 (\$4552) for the period from May 1, 2001, through May 31, 2001, to GSA. SIM asserts that it followed the procedures as instructed, sending the invoices to GSA Region 2 by fax. On December 16, 2009, SIM submitted to GSA a new version of this invoice, as well as other invoices under this task order. SIM acknowledges that it submitted an incorrect version of this invoice, to which it did not attach timesheets. However, SIM contends that it submitted a corrected version of the invoice with its amended claim. GSA did not dispute the invoice at the time, nor did it pay SIM for the amount charged.

Task Order T00001165 - GSA Region 1 Engineering Support⁴

On September 12, 2001, GS issued task order T00001165 for engineering support services for GSA's Region 1 office located in Boston, Massachusetts, for an initial period of performance of September 20, 2001, to September 30, 2002, and an initial value of \$60,000.

The SOW did not contain a GSA-drafted invoicing procedure. It incorporated language from the Prompt Payment Act, 31 U.S.C. § 3903(a)(1)(B), requiring only the submission of a proper invoice. It did not require the submission of a signed labor certification or signed timesheets.

⁴ GSA did not address this task order in its post-hearing brief.

SIM asserts that it performed the task order and submitted monthly invoices throughout the period of performance. SIM submitted ten monthly invoices covering the months of performance from September 2001 through June 2002.

In June 2002, GSA notified SIM that GSA had changed the ACT number for the engineering support task. GSA requested that SIM resubmit the previously submitted invoices to reflect the new ACT number. SIM resubmitted the prior invoices, with an "A" added to the invoice. For the work performed in July through September, SIM submitted three more invoices.

Although GSA did not reject the invoices at the time of submission, GSA failed to pay SIM \$81,483.61 for the thirteen invoices submitted for work performed from September 2001 through September 2002.

Testimony at trial

Ms. Slaey, the CEO of SIM, testified extensively about the procedures followed by SIM when it invoiced the Government for work performed. Ms. Slaey testified that on a monthly basis, SIM would create a packet of invoices for all of the active tasks, which it would submit to GSA. GSA would then obtain certifications from the clients and forward the signed, certified invoices to the payment office.

Ms. Slaey explained that SIM had a difficult time putting together all necessary documents to support its claim. Ms. Slaey testified that in May 2004, the GSA Inspector General's office confiscated all of its records, including all personnel records, financial records, and other documents, as well as twenty-one computers. SIM subsequently received copies of some of the records. Ms. Slaey testified that GSA did not return all of the records removed or any of the computers, although SIM did receive some replacement drives for some of the computers. The documents used to assemble the claim were cobbled together from these returned records, as well as records obtained through discovery from the various government agencies for which SIM had performed work under the task orders.

Over the course of several days of hearing, witnesses testified concerning the work performed under the task orders. For example, Shelley Ann Diedrich, an employee of the Coast Guard, confirmed that during the time period of 2001-2003, SIM performed work under the task order and submitted timely monthly invoices, some of which she personally certified. Ms. Diedrich testified that the Coast Guard had paid GSA for the work performed by SIM through a military interdepartmental purchase request (MIPR). Apparently, however, at some point, a dispute arose regarding funding issues. As a result of these funding issues,

Ms. Diedrich believed that SIM had not received payment from GSA for all invoices submitted.

Another witness, Wanda Patterson, a GSA employee, confirmed that at some point in time, GSA had withheld payment and verbally issued a stop work order on the Coast Guard project, allegedly because of SIM's failure to timely submit invoices for work performed. However, Ms. Patterson also testified that the record indicated that SIM did in fact submit invoices, but that the invoices may have been rejected by the system because of a change in SIM's Central Contractor Registration (CCR) status. Ms. Patterson explained that a change in CCR status would cause the system to reject invoices submitted through the system, and that change potentially impacted SIM's ability to submit invoices. A second GSA witness, Siobhan Frongillo, also testified that some invoices may have been rejected due to the use of an incorrect ACP⁵ number.

Freddy Sanchez, an environmental engineer working at Picatinny Arsenal, also confirmed that SIM performed the work as required under task order 02MT21058. Mr. Sanchez noted, however, that he recalled late invoices and discrepancies in the hours billed. For example, Mr. Sanchez testified as to one invoice overbilling the Government in the amount of 197 hours for one employee and approximately 90 hours for another. Mr. Sanchez stated that he started keeping a spreadsheet for the various hours charged in order to track the late invoices and the amounts charged. However, the problematic invoices did not appear to be the same ones included by SIM in its claim.

Albert Nebolini testified concerning the Benet Lab task orders. Mr. Nebolini confirmed that SIM would send invoices to GSA in New York, which would then send the invoices to Benet Labs. Either Larry Martin or Mr. Nebolini would sign the invoices once the supervisors had confirmed that SIM employees had performed the work. Once they signed the invoices, they would fax them back to GSA for payment. If Mr. Nebolini did not agree that the invoice accurately documented work performed, he would speak to Leo Medley⁶ or Floyd Griffith at GSA. In any event, Mr. Nebolini would only sign invoices he believed to be accurate. Mr. Nebolini certified that the process applied all task orders at Benet Labs. He also testified that he approved invoices that included costs for SIM employees to travel, as well as costs related to SIM employees participating in training.

⁵ The witness did not define "ACP" during her testimony.

⁶ The record appears to indicate that Mr. Medley worked for SIM directly, but later transitioned to become a full-time GSA employee. The record, however, does not clearly indicate precisely when Mr. Medley left SIM to become a full-time GSA employee.

Another GSA official, Jayne Cucetta, testified concerning the steps GSA took in 2008 to evaluate SIM's certified claim. Ms. Cucetta explained that, at the request of contracting officer Fitzgerald Chin, she searched electronically through various databases, although she did not search the database known as Pegasys because she did not have access to it. Ms. Cucetta admitted that the databases searched would not identify unpaid invoices. Ms. Cucetta physically searched through a single file closet at GSA headquarters and did not discover any information regarding the unpaid invoices. Ms. Cucetta confirmed that she did not "actively go looking" for documents regarding submission of the SIM invoices. All documents that Ms. Cucetta found related to SIM's certified claim are included in the appeal file compiled by GSA.

After reviewing the documents she found at GSA and the documents retrieved from Coast Guard files, as well as examining the documents provided by SIM to support its claim, Ms. Cucetta concluded that the invoices did not always accurately reflect the hours billed, nor did she find sufficient support for amounts claimed for travel and other expenses. Ms. Cucetta confirmed that she only reviewed invoices in the course of reviewing SIM's certified claim in 2008. Ms. Cucetta had no responsibility for examining SIM's invoices that had been submitted prior to submission of the claim. In response to a series of questions concerning the relationship of funding to payment of invoices, Ms. Cucetta expressed doubt that GSA had properly tracked funding on invoices, and that lack of funding, she said, could cause invoices to be rejected.

Finally, David Monahan, a GSA employee who, in 2002, served as a contracting officer for FTS Region 2, testified that he did not approve of the process in place for paying invoices submitted by SIM. Specifically, Mr. Monahan expressed concerns⁷ about the issuance of task orders to SIM under the BOA, explaining that he preferred to competitively issue task orders. Mr. Monahan implemented a new procedure for payment of invoices. At the same time, Mr. Monahan suspended payment of SIM's invoices on the Coast Guard task order. Mr. Monahan testified that it would not matter whether he received information from the Coast Guard that work had been performed satisfactorily, that the funds had been properly MIPR'd and accepted by GSA, or that a signed certification from the client representative accompanied the voucher; in any event, the order suspending payment to SIM

⁷ Mr. Monahan expressed suspicion that there was inappropriate and potentially criminal behavior occurring on the SIM contract and indicated that an inspector general investigation had taken place. To Mr. Monahan's understanding, SIM had not been convicted of criminal activity.

would stand. Mr. Monahan also stated that he took action to prevent other contracting officers from paying SIM's outstanding invoices.

Submission of the Claim and Final Decision

On April 18, 2008, SIM submitted a claim for payment for invoices submitted for services rendered under task order T00001165. After SIM submitted invoices for September 2001 through December 2001, GSA modified the task order, identifying it as task order TP0002864, and provided SIM with a new ACT number. GSA requested that SIM resubmit the invoices for November 2001 and December 2001. On August 13, 2008, SIM received notice from Fitzgerald Chin, a contracting officer for Region 2, stating:

Regarding your claim under Task Order number TP0002864, the award of the task was made by GSA's New England Region (Region 1). They are the cognizant contracting activity and your claim must be filed with the New England Region.

Consequently, SIM resubmitted its claim on October 28, 2008, to Region 1. The claim contained a certification signed by Ms. Slaey, the CEO of SIM. The claim sought payment of thirteen invoices submitted during the period of performance of September 2001 through September 2002, for a total of \$81,483.61. After receiving no contracting officer decision on this claim, SIM filed an appeal at this Board on a deemed denial basis. The appeal was docketed as CBCA 1537. SIM seeks payment for these unpaid invoices and interest pursuant to the Prompt Payment Act, as well as CDA interest.

On April 18, 2008, SIM submitted a claim for forty-five unpaid invoices for work performed for the U.S. Coast Guard, the U.S. Army at Benet Labs, Watervliet Arsenal, and the U.S. Army at Picatinny Arsenal and support work to GSA Region 2 at Fort Monmouth, Puerto Rico, and other GSA sites, docketed as CBCA 1512. SIM asserts that GSA received these invoices no later than October 2003 and did not reject them at the time. SIM initially sought payment of \$1,038,829.74, as well as interest under the Prompt Payment Act and the CDA.⁸

⁸ As noted previously, the total amount of the claim changed when SIM withdrew several invoices from its claim and revised other invoices.

Discussion

SIM contends that it did not get paid for work performed, despite having submitted invoices for payment with adequate supporting documents. GSA disagrees, contending that SIM failed to submit timely, accurate, and complete invoices as required by the terms of the various task orders. After reviewing all of the evidence presented, including an extensive appeal file, transcripts from six days of testimony, and voluminous post-trial briefings, we conclude that the preponderance of the evidence supports SIM's claims for payment of the unpaid invoices.

When a contractor seeks payment for unpaid invoices, it must prove “that it delivered the [services] in accordance with the contract requirements, that it properly and timely submitted invoices for those services, and that such invoices remained unpaid by the Government.” *Ahmed S. Zhickrulla*, ASBCA 52137, 03-2 BCA ¶ 32,409, at 160,420. The contractor must prove each element by a preponderance of the evidence. *See Commercial Contractors, Inc. v. United States*, 154 F.3d 1357, 1362 (Fed. Cir. 1998). “Preponderance of the evidence” means “proof by information that, compared by that opposing it, leads to the conclusion that the fact at issue is more probably true than not.” 48 CFR 2.101. We have held that “a party asserting a claim has met its burden of proof by presenting corroborating evidence in support of that claim.” *Navigant Satotravel v. General Services Administration*, CBCA 449, 11-1 BCA ¶ 34,765, at 171,103.

In this case, SIM established through documents and testimony that (1) SIM completed the work ordered under each of the task orders discussed above, (2) SIM properly and timely sent invoices to GSA for work completed under each, and (3) the invoices have not been paid. Thus, SIM has established its *prima facie* case to support its claim. *See, e.g., Reliable Contracting Group, LLC v. Department of Veterans Affairs*, CBCA 1539, 11-2 BCA ¶ 34,882 (agency failed to meet burden of proof to rebut the reasonableness of invoices submitted by contractor).

GSA has failed to provide compelling evidence to rebut SIM's *prima facie* case. First, on the issue of whether SIM completed the work ordered, government witnesses at trial testified that SIM had accomplished the work as ordered. The fact that SIM completed the work is evidenced by the fact that, as required, when SIM would submit invoices, a client representative would sign either the invoice itself and/or the timesheets, and these documents would be forwarded to GSA for payment. For the Coast Guard task orders – the bulk of unpaid task orders – witnesses testified and documents confirmed the effort made by the Coast Guard representatives, on multiple occasions, to provide GSA with the verifications necessary to ensure that SIM received payment for its work.

Second, the record shows that SIM properly and timely sent invoices to GSA. Although GSA argues that SIM delayed in submitting invoices, the evidence is to the contrary. At trial, it became clear that in some cases, SIM had submitted invoices, but due to a change in various codes assigned to the task orders, SIM was then required to resubmit invoices. Apparently some invoices were returned due to the change in SIM's CCR status, and SIM was then required to resubmit those invoices. For other invoices, GSA's own witness Mr. Monahan testified that he ordered GSA to stop processing SIM's invoices, despite the fact that the invoices complied with all requirements, including containing a valid client representative certification and supporting documents.

In any event, while SIM may have delayed submitting some invoices, the fact remains that by 2003 GSA had received, from SIM and from the Coast Guard, all of the unpaid invoices remaining on the Coast Guard task order. Even though SIM had resubmitted these unpaid invoices with the supporting documents, and the Coast Guard independently submitted a memorandum documenting the unpaid invoices and the supporting documents, GSA took no action on the invoices. There is no dispute that these outstanding invoices have not been paid.

We find that GSA failed to sufficiently rebut the evidence appellant submitted regarding the invoices. GSA's assertions that SIM failed to provide adequate supporting documents for the invoices do not explain GSA's inconsistent actions. GSA never explained why it paid some invoices and did not pay others, even though the unpaid invoices had the same supporting documentation. SIM has met its burden of proof because it presented adequate corroboration of its claim through the client representative's statements. *See Navigant Satotravel*. Therefore, SIM is entitled to payment of the subject invoices.

Prompt Payment Act

Once the contractor proves by a preponderance of the evidence that it submitted invoices to the Government, the Government must comply with the Prompt Payment Act (PPA), 31 U.S.C. § 3903 (2006). The PPA generally provides that an agency must make payment within thirty days after a proper invoice for the amount due is received. *Delta Air Lines, Inc. v. General Services Administration*, CBCA 1306, 09-1 BCA ¶ 34,052, at 168,407. If the agency finds that the invoice does not comply with contract requirements, it must return the invoice within seven days after the designated billing office received it, with a statement of the reasons why it is not a proper invoice. § 3903(a)(7)(B).

We find no evidence that GSA rejected any of the invoices submitted by SIM, or returned any invoice with a statement as to why it was not a proper invoice. Instead, it appears that GSA took no action on the invoices. Under the PPA, because GSA did not make

payment by the required payment date, it must pay the contractor not only the principal amount due, but also an interest penalty. § 3902(a). PPA interest begins to run on the date after the required payment date; it ceases to run when the first of the following events occurs: payment is made, a claim for interest is filed under the Contract Disputes Act, or one year passes from the required payment date. §§ 3902(a)(b), 3907(b). We find that SIM is entitled to be paid interest for the unpaid invoices calculated in accordance with the Prompt Payment Act.

GSA Affirmative Defenses

As GSA asserts, the CDA required SIM to submit its claim to the contracting officer for final decision within six years of claim accrual. 41 U.S.C. § 7103(a)(4)(a) (Supp. IV 2011). SIM sent initial invoices to GSA between 2000 and 2002. GSA then requested that SIM resubmit its invoices in 2003. Because the time between 2003 (when SIM resubmitted its invoices at GSA's request) and April 18, 2008 (when SIM filed its certified claim with the contracting officer) did not exceed six years, the statute of limitations does not bar any of SIM's claims.

GSA asserts a second affirmative defense – the doctrine of laches. The argument is sparse – GSA contends that “the above record demonstrates SIM [sic] lack of excusable delay in submitting its claim.”

This Board defines laches as the “neglect or delay in bringing suit to remedy an alleged wrong, which taken together with lapse of time and other circumstances, causes prejudice to the adverse party and operates as an equitable bar.” *Marut Testing & Inspection Services, Inc. v. General Services Administration*, CBCA 1325, 11-1 BCA ¶ 34,673, at 170,808 (citing *A.C. Aukerman Co. v. R.L. Chaides Construction Co.*, 960 F.2d 1020, 1028-29 (Fed. Cir. 1992) (en banc)). Therefore, two elements must be proven in order to establish laches: (1) unreasonable, unexcused delay by the claimant and (2) prejudice to the respondent. *See id.*

Here, although GSA asserts laches, it has failed to prove the two elements necessary to establish that laches should apply. Without more, the affirmative defense cannot stand.

Decision

We **GRANT** the appeals and find that SIM is entitled to be paid for the unpaid invoices, a total sum of \$1,058,722.23. In addition, SIM is entitled to be paid interest as calculated under the Prompt Payment Act on each invoice in question from the thirty-first day after that invoice was received until the first of the following events occurred: payment was

made, SIM's certified CDA claim was filed, or one year passed from the date on which interest began to run. SIM is also entitled to be paid interest as calculated under the CDA from the date on which the contracting officer received each of SIM's certified claims until the date of payment.

JERI KAYLENE SOMERS
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

ALLAN H. GOODMAN
Board Judge