



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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MOTION FOR SUMMARY JUDGMENT DENIED: April 30, 2024

CBCA 7465

HONEYWELL INTERNATIONAL INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Robert J. Sneckenberg and Eric K. Herendeen of Crowell & Moring LLP, Washington, DC, counsel for Appellant.

Jay Bernstein and Kelly Y. Burnell, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **GOODMAN**, **SHERIDAN**, and **O'ROURKE**.

**O'ROURKE**, Board Judge.

An audit performed by respondent, the General Services Administration (GSA or agency), of the administration of an energy savings contract with appellant, Honeywell International Inc. (Honeywell), revealed discrepancies in the billing and payment of after-hours operations and maintenance services. Based on the audit, the agency issued a demand letter to Honeywell for more than twenty million dollars and executed a unilateral modification to effect repayment of the amounts allegedly owed the agency.

Appellant appealed the demand to this Board and moved for summary judgment, arguing that the agency's claim was barred by a bilateral modification and release signed by

the parties in response to an earlier dispute covering the same issue. The agency opposes the motion, asserting that the earlier modification and release only pertained to finding 1 in the audit but not to findings 2 and 3. The plain language of the modification and release incorporates a negotiated agreement, dated October 27, 2021, which appellant contends consists of a series of emails between the parties. Because we find a material dispute of fact regarding the terms of the negotiated agreement—and, therefore, the scope of the modification and release—we deny the motion.

### Background

On December 23, 2010, GSA awarded Honeywell task order GS-P-11-11-MK-0002. The task order was issued under the Department of Energy’s Energy Savings Program (ESP) indefinite-delivery, indefinite-quantity (IDIQ) contract for a period of performance of twenty-four years and a value of \$785,832,085.<sup>1</sup> The task order (hereinafter “the contract”) required Honeywell to provide operations and maintenance services, including “labor, materials, equipment, and supervision to design, construct, operate, and maintain the third phase of energy infrastructure development” at the Food and Drug Administration (FDA) White Oak campus in Silver Spring, Maryland.<sup>2</sup>

On December 24, 2015, the parties modified the contract to add a requirement for after-hours services, including facility maintenance and tour coverage outside of normal business hours.<sup>3</sup> Specifically, the modification required Honeywell to provide “two (2) journeymen steamfitters; two (2) [building automation systems (BAS)] technicians; and one (1) electrician to support after-hours campus-wide facility maintenance and tour coverage” for the site. The modification was valued at \$145,491,000.

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<sup>1</sup> ESP contracts allow federal agencies to procure energy savings and facility improvements by contracting with an energy savings company that privately finances and installs energy-efficient improvements to a facility.

<sup>2</sup> Honeywell was awarded both the first and second phases of this development project, which included the design and implementation of a central utility plant to provide off-grid, dedicated utilities at the FDA’s facilities at the White Oak campus (phase one), and the expansion of the central utility plant (phase two).

<sup>3</sup> The contract’s statement of work (SOW) defines a “tour” as either (1) scheduled visits to equipment rooms and installations by operating personnel to assure that equipment is running properly and equipment rooms are in good order and without safety hazards, to make any necessary adjustments to operating controls, and to lubricate equipment, if needed, or (2) some combination of such visits with automated monitoring of equipment and systems.

A hotline complaint in 2016 prompted an inspector general (IG) audit of GSA's administration of the contract. The audit identified multiple discrepancies regarding the level of contract staffing that led to invoicing and payment inaccuracies. The audit alleged that: (1) GSA overpaid for services due to a miscalculation of those services, (2) Honeywell failed to provide the requisite number of staff for after-hours services, and (3) after-hours services staff performed twelve-hour shifts rather than the fourteen-hour shifts required by the contract.<sup>4</sup>

On February 19, 2021, the contracting officer notified Honeywell of the discrepancies (also referred to as "findings") by letter, stating, "In response to the above findings, GSA must complete a comprehensive review of the original proposed calculations and verify that Honeywell has provided the required five technicians to provide the after-hours tour services." The letter sought specific documents from Honeywell, such as Honeywell's original proposed calculations for two positions and tour reports, payroll records, and time-sheets for Honeywell and its subcontractors, from August 2015 through February 2021. The deadline for submission of the requested documents was March 15, 2021. Honeywell disagreed with the findings but provided the additional documentation in early April 2021, which GSA reviewed.

On September 17, 2021, the contracting officer sent Honeywell a letter stating that "GSA intends to withhold the overpayment that was paid to Honeywell . . . for the After-Hours 24/7 Tour Services from September 18, 2015 through March 31, 2021, in the amount of \$6,240,804." The letter referenced findings 1 and 3 of the audit and alleged that the overpayment was the result of two different discrepancies—a miscalculation of hours for two positions (finding 1) and excessive payments over a three-year period (2015 to 2018) during which Honeywell provided staffing for twelve-hour shifts when fourteen-hour shifts were contractually required (finding 3).

Honeywell responded to the notice of withholding one week later, describing the miscalculation as a "mutual mistake" at best, reminding GSA that the pricing model for the after-hours work came from GSA, not Honeywell, and asserting that, "accordingly, the GSA should bear all of the costs associated with that mistake." Regarding finding 1, Honeywell argued that there was no factual or legal support for GSA's position on "why the use of the 2500-hour deduction was other than a mutual mistake or GSA's unilateral mistake" and clarified that "at no time . . . has Honeywell accepted responsibility for any mistake in the

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<sup>4</sup> The IG's final report, dated May 17, 2021, identified management and oversight failures related to the ESP contract, such as "unsupported payment for services, inadequate contract oversight, failure to enforce contract requirements, and a lack of required deliverables."

calculations.” With regard to finding 3, Honeywell stated, “we are also confused by the issue you raised in your letter regarding an alleged discrepancy between the hours worked and the hours contractually required.” Despite their adverse positions, the parties, on February 28, 2022—more than one year after Honeywell was first notified of the audit findings—signed a bilateral modification to the contract, which stated, in relevant part:

This contract modification incorporates a negotiated agreement (dated 10/27/2021) between Honeywell International Inc. and the United States Government regarding prior payments of After-Hours Services from September 1, 2015 through March 31, 2020 to Honeywell in the amount of \$5,335,108.00.

In recognition of the Government’s status as a valued Honeywell customer, this amount will [be] identified as a goodwill credit to the Government against future payments for the After-Hours Services in the Contract, that is funded on an annual basis to Honeywell. This credit will be applied each April 1st over a five-year period beginning April 1, 2022 at the rate of \$1,067,022.00 per Year and shall be evenly spread across each monthly payment for the given year. . . .

This Agreement as reflected in this modification constitutes a full and final settlement of all issues relating to the After-Hours Services provided by Honeywell from September 1, 2015 through March 31, 2020.

All other terms and conditions remain the same.

About a month later, on March 24, 2022, the contracting officer sent Honeywell a “follow-up letter” regarding the second and third findings identified in the audit.<sup>5</sup> The contracting officer informed Honeywell that, based on the information it provided to GSA in April 2021, “we have found substantial missing documentation to support the total annual hours of 28,800 required under these contract services.” A summary spreadsheet was

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<sup>5</sup> After the contract was modified in December 2015, Honeywell was required to supply five technicians to perform after-hours services (two steam-fitters, two BAS technicians, and one electrician); however, random facility inspections and document reviews showed that five technicians were not routinely provided, though GSA paid for them. With regard to the number of hours constituting an after-hours shift, the SOW, which was dated August 24, 2015, and preceded the December 2015 modification, established that after-hours services began at 5 p.m. and ended at 7 a.m. during the week. On weekends and holidays, the after-hours shift required twenty-four-hour coverage.

attached to the letter to show which hours were substantiated “from the documentation submitted so far.” The contracting officer asked Honeywell to review the information and “provide additional support for the missing hours” by 6 p.m. on April 2, 2022.<sup>6</sup>

On April 1, 2022, Honeywell responded to the contracting officer’s letter, stating that it would provide time sheet data for its subcontractors for the after-hours staffing and the hourly records of Honeywell’s onsite supervisor “who often provided after-hours support to ensure full coverage . . . when needed, due to vacation and planned leave, along with unforeseen incidents such as sickness, bad weather, etc., that disrupted the performance of designated resources.” Honeywell provided the information to GSA, which GSA ultimately determined was insufficient to support all amounts billed by, and paid to, Honeywell.

In response, GSA sent Honeywell a demand letter, dated April 29, 2022, seeking recoupment of \$20,221,466.64, which GSA determined was the amount it had paid to Honeywell for services that could not be substantiated by the IG audit or by the additional documentation from Honeywell. The letter informed Honeywell that “[t]he Government intends to set up a repayment agreement in the amount of \$4,044,293.33 per year for five (5) years beginning April 1, 2023.” The demand letter was incorporated into the contract by a unilateral modification, which the contracting officer issued on April 29, 2022. The demand letter was not styled as a contracting officer’s final decision (COFD) and did not advise Honeywell of its appeal rights. However, neither party disputed its finality, so it was treated as a claim by GSA against Honeywell for a sum certain.

On July 28, 2022, Honeywell filed with the Board an appeal of the contracting officer’s April 29, 2022, demand letter. The parties initially tried to resolve the dispute informally. After negotiations failed, Honeywell filed a motion for summary judgment, contending that GSA’s demand fell within the scope of the bilateral modification and release that the parties executed in February 2022, which covered “all issues relating to the After-Hours Services provided by Honeywell from September 1, 2015 through March 31, 2020.” Honeywell’s motion points to the plain language of the release in support of granting summary judgment, maintaining that the release resolved “all issues” related to the after-hours services over the specified time period.

In response to the motion, GSA disagreed that the release barred its claim, stating that the parties spent over a year focused solely on resolving the miscalculation issue (finding 1)

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<sup>6</sup> Although the IG audit revealed that from 2015 to 2018 Honeywell only provided after-hours technicians for twelve hours per shift, instead of the fourteen hours specified in the contract, the requirement for after-hours services was permanently reduced in 2018 to reflect a need for twelve-hour shifts.

and that their agreement,<sup>7</sup> along with the resulting modification and release, pertained *only* to that issue. GSA argued that the phrase “the After-Hours Services” was ambiguous because there were multiple categories of such services and this phrase does not specify which category is being addressed, necessitating consideration of extrinsic evidence to properly interpret the release. As such, GSA urges the Board to deny the motion.

### Discussion

#### Jurisdiction

The Board’s jurisdiction is derived from the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018), which authorizes the Board to decide any appeal from a decision of a contracting officer of any executive agency, with certain exceptions. *Id.* § 7105(e)(1)(B). Submission of a claim and a COFD on the claim are prerequisites for an appeal to the Board. *Optum Public Sector Solutions, Inc. v. Department of Veterans Affairs*, CBCA 7920, 23-1 BCA ¶ 38,464, at 186,950. The Federal Acquisition Regulation (FAR) defines a claim as “a written demand . . . by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain.” 48 CFR 2.101 (2023). With regard to government claims, “[e]ach claim by the Federal Government against a contractor . . . shall be the subject of a written decision by the contracting officer” and “shall state the reasons for the decision reached and shall inform the contractor of the contractor’s rights as provided in this chapter.” 41 U.S.C. § 7103(a)(3), (e).

Here, the contracting officer demanded payment from Honeywell in the amount of \$20,221,466.64 and explained the reasons for the demand. Although the contracting officer did not identify the letter as a final decision, she also did not request additional documentation from Honeywell or invite further discussion about the matter—actions that would have undermined the finality of the demand and the efficacy of this appeal. A demand letter that invites a contractor to submit facts or argument believed to be relevant to the claim is not an appealable COFD. *4K Global-ACC Joint Venture, LLC v. Department of Labor*, CBCA 7392, 22-1 BCA ¶ 38,163, at 185,332-33; *see Sharman Co. v. United States*, 24 Cl. Ct. 763, 768 (1991).

The contracting officer also unilaterally modified the contract and expressly incorporated the demand letter into the modification, actions which further attest to the

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<sup>7</sup> The Board sought clarification from appellant regarding the identification of a negotiated agreement, dated October 27, 2021, that was “expressly incorporated” into the modification. Appellant explained that the referenced agreement was part of an email chain between the parties, which was provided with appellant’s motion.

finality of the demand. The fact that the letter did not advise Honeywell of its appeal rights does not defeat a finding of jurisdiction in this case. “[A] decision is no less final because it failed to include boilerplate language . . . usually present for the protection of the contractor.” *4K Global-ACC Joint Venture*, 22-1 BCA at 185,332 (quoting *Placeway Construction Co. v. United States*, 920 F.2d 903, 907 (Fed. Cir. 1990)). Honeywell suffered no prejudice or harm due to the lack of notice, and it alleges none. Moreover, GSA did not challenge our jurisdiction. For these reasons, we find that the demand letter constituted a final decision by the contracting officer on a government claim, and Honeywell’s appeal from that letter established our jurisdiction to hear this matter. We turn now to the motion before us.

### Appellant’s Motion for Summary Judgment

In its motion for summary judgment, Honeywell urges the Board to interpret the language of the modification as a broad release of claims, such that any disputes related to the provision of after-hours services that were raised after the execution of the bilateral modification are barred from further consideration. GSA, on the other hand, contends that the modification applied only to the first finding in the audit—the miscalculation of hours for two positions—and the fact that the parties disagree over what is meant by “the After-Hours Services” demonstrates the ambiguous nature of the modification, which can be cleared up by examining extrinsic evidence.

The standard for summary judgment is well-established. *1425-1429 Snyder Realty, LLC v. Department of Veterans Affairs*, CBCA 6433, 21-1 BCA ¶ 37,791, at 183,464. “Summary judgment is appropriate when no material facts are in dispute and the moving party is entitled to judgment as a matter of law.” *Id.*; see *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Harris IT Services Corp. v. Department of Veterans Affairs*, CBCA 5814, et al., 20-1 BCA ¶ 37,533, at 182,269 (2019). The parties acknowledge that they negotiated a settlement agreement on October 27, 2021, and then executed a bilateral modification based on that agreement on February 28, 2022. They disagree, however, on the scope of that agreement and of the resulting modification and release.

The question of whether the modification at issue released the claims asserted by GSA in the April 29, 2022, demand letter is a matter of contract interpretation. “The fundamental objective in contract interpretation is to determine the parties’ intent at the time the contract was executed.” *Bank of America v. Department of Housing & Urban Development*, CBCA 5571, 18-1 BCA ¶ 36,927, at 179,888 (2017) (quoting *ASP Denver, LLC v. General Services Administration*, CBCA 2618, et al., 15-1 BCA ¶ 35,850, at 175,304 (2014)). To resolve an issue of contract interpretation, we first look to the plain language of the contract. *Foley Co. v. United States*, 11 F.3d 1032, 1034 (Fed. Cir. 1993). We read the contract as a whole, giving reasonable meaning to all its parts. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274

(Fed. Cir. 1991). “An interpretation that gives meaning to all parts of the contract is to be preferred over one that leaves a portion of the contract useless, inexplicable, void, or superfluous.” *NVT Technologies, Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004). “We apply the same principles when we focus on the scope of a release.” *Bank of America*, 18-1 BCA at 179,888-89; see *Sylvan B. Orr v. Department of Agriculture*, CBCA 5299, 16-1 BCA ¶ 36,522, at 177,926 (“Because a release is contractual in nature, it is interpreted in the same manner as any other contract term or provision” (quoting *Bell BCI Co. v. United States*, 570 F.3d 1337, 1341 (Fed. Cir. 2009))).

The release at issue states: “This Agreement as reflected in this modification constitutes a full and final settlement of all issues relating to the After-Hours Services provided by Honeywell from September 1, 2015 through March 31, 2020.” Honeywell maintains that “all issues related to the provision of after hours services” plainly means *all* issues, not some issues, and that the phrase “all issues” is “unequivocal and unambiguous.” The flaw in that argument is that it fails to recognize the language that immediately precedes the words “full and final settlement of all issues.” The entire sentence reads: “*This Agreement as reflected in this modification* constitutes a full and final settlement of all issues . . . .” (Emphasis added.) We cannot read out or ignore the first part of that sentence, which plainly references the parties’ agreement and the modification. The modification expressly states that it “incorporates a negotiated agreement (dated 10/27/2021) . . . regarding prior payments of After-Hours Services.” These words qualify the after-hours services, so we must consider them. The terms of the referenced agreement, however, are not contained in the modification or attached to it but rather were captured in email exchanges between the parties.

We expected that reviewing the emails would clarify the scope of the modification and release—whether it pertained to all of the findings raised in the audit (miscalculations, understaffing, and unprovided hours), as Honeywell contends, or just the first finding, as GSA asserts. But that was not the case. We noticed that both parties attempted to sum up what was agreed to for the purposes of finalizing a bilateral modification. They used phrases such as “the email agreement,” “a move forward plan,” “the final agreement for the overpayment of the 24/7 services,” and “a negotiated payback agreement.” Even the email from Honeywell to GSA, dated October 27, 2021, which appellant asserts is *the* negotiated agreement referenced in the modification, described the contents of the email as “a summary of our alignment, which will be finalized by our respective attorneys as soon as possible.” More importantly, that email was sent in response to an email from the contracting officer that also tried to summarize the terms of their agreement. Looking at them side-by-side, however, it was as if the parties were summarizing two different negotiations, perhaps in an effort to memorialize their own interpretations as representative of the parties’ joint agreement. Whatever the reasons, the result is confusing. An agreement should function as a mirror, reflecting back what stands before it. We do not have that here. Instead, the parties



*disagree on the terms of their agreement*, and the plain language does not help them, or us, decipher it.

For the purposes of this motion, we are obligated to construe the facts in favor of the non-movant. In doing so, we find that a dispute of material fact exists as to the scope of the modification and release, and we require further development of the record to determine the parties' intentions in executing the same. Honeywell's second argument, that an accord and satisfaction has been effectuated by the parties' "mutual agreement," fails for the same reasons.

Decision

Appellant's motion for summary judgment is **DENIED**.

*Kathleen J. O'Rourke*

KATHLEEN J. O'ROURKE

Board Judge

We concur:

*Allan H. Goodman*

ALLAN H. GOODMAN

Board Judge

*Patricia J. Sheridan*

PATRICIA J. SHERIDAN

Board Judge