UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

THIS OPINION WAS INITIALLY ISSUED UNDER PROTECTIVE ORDER AND IS BEING PUBLICLY RELEASED IN ITS ENTIRETY ON SEPTEMBER 24, 2025

APPELLANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT GRANTED: September 17, 2025

CBCA 8250, 8251

GREAT LAKES EDUCATIONAL LOAN SERVICES, INC.,

Appellant in CBCA 8250,

and

NELNET SERVICING, LLC,

Appellant in CBCA 8251,

v.

DEPARTMENT OF EDUCATION,

Respondent.

Stuart W. Turner, Amanda J. Sherwood, and Nicole A. Williamson of Arnold & Porter Kaye Scholer LLP, Washington, DC, counsel for Appellant.

Candice Jackson and Tim Rushenberg, Office of the General Counsel, Department of Education, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **SULLIVAN**, and **VOLK**.

SULLIVAN, Board Judge.

Great Lakes Educational Loan Services, Inc. (Great Lakes) and Nelnet Servicing, LLC (Nelnet) (appellants) contracted with the Department of Education (Education) to provide student loan processing services. In 2023, Education modified the contracts to require that appellants pay the federal contractor minimum wage and allow employees to earn paid sick leave. In 2024, Education denied appellants' claims for the cost of these additional requirements, asserting that the Economic Price Adjustment (EPA) clause in the contracts precluded payment of these costs. We hold that appellants are entitled to recover the cost of those increases, and we will determine the amount in future proceedings.

Background

I. Contracts and Relevant Terms

Pursuant to the contracts executed in June 2009, appellants were to provide "commercial contract services to manage all types of Title IV student aid obligations, including, but not limited to, servicing and consolidation of outstanding debt." Exhibits 1 at 22, 2 at 95.[1] The contracts were indefinite-delivery, indefinite-quantity contracts with a $5,000,000 guarantee for the five-year base period. Exhibits 1 at 3, 2 at 76.

The contracts had an initial five-year term from June 2009 to June 2014 with an option to extend for an additional five years from 2014 to 2019. Exhibits 1 at 3, 2 at 76. Through a series of modifications, Education extended the period of performance through December 2023 for Great Lakes and through March 2024 for Nelnet. Exhibits 11, 18. On December 14, 2022, Education issued modifications to the contracts pursuant to FAR 52.217-9, Option to Extend the Terms of the Contract, extending the period of performance on the contracts from December 15, 2022, to December 14, 2023. Exhibits 11, 12. In June 2023, Great Lakes transferred all of its loan servicing volume to Nelnet. Exhibit 20 at 220. In April 2024, Nelnet began servicing borrowers on a new contract and ceased operations on the contract awarded in 2009. Notice of Appeal (CBCA 8251), Exhibit B (Nelnet claim) at 4.

Appellants were paid on a per borrower basis pursuant to a common pricing structure established by Education. Exhibits 1 at 16, 2 at 89. The contracts included "an escalation methodology based upon the Bureau of Labor Statistics' (BLS) Employment Cost Index (ECI) for Total Compensation, Private Industry, Service Occupations (Not Seasonally

[1] Unless otherwise noted, "Exhibit XX at XX" refers to the exhibit numbers in the appeal file and the bates numbers appended by the parties.

Adjusted), to account for significant inflation and/or deflation." *Id*. (EPA clause).[2] Pursuant to this clause, the Government was obligated to adjust "the established common pricing" by the amount that the cost index increase exceeded three percent. *Id*. Common pricing was defined to include "all supplies, services and other costs to deliver Title IV servicing under [the] contract." *Id*.

The contracts incorporated by reference the clauses from Federal Acquisition Regulation (FAR) 52.222-41 (Service Contract Act of 1965 (NOV 2007) (48 CFR 52.222-41 (2008))), and FAR 52.222-43 (Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (NOV 2006)), which implement the requirements of, respectively, the Service Contract Act of 1965, 41 U.S.C. §§ 351–358 (2006), and the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219. Exhibits 1 at 20, 2 at 93. Pursuant to FAR 52.222-41(e), the contracts required that appellants and their subcontractors pay employees at least the hourly minimum wage established in section six of the Fair Labor Standards Act, which was raised to $7.25 the year the contracts were awarded. 29 U.S.C. § 206(a)(1); Pub. L. 110-28, title VIII, § 8102(a), 121 Stat. 112 (codified at 29 U.S.C. § 206 (2012)). Pursuant to FAR 52.222-43(d), the contract prices would be adjusted "to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with . . . [a]n increased or decreased wage determination otherwise applied to the contract by operation of law." In signing the contract, the "[c]ontractor warrant[ed] that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause." FAR 52.222-43(b). The contracts in the record do not include a wage determination.

The contracts also included a Changes clause, which permitted the contracting officer to make changes to the services to be performed:

> (1) *Changes*. The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
> (i) Description of services to be performed.

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[2] According to the BLS website, the ECI "measures the change in the cost of labor, free from the influence of employment shifts among occupations and industries." Bureau of Labor Statistics, Employment Cost Index–June 2010, U.S. Department of Labor at 4 (July 30, 2010) (https://www.bls.gov/news.release/archives/eci_07302010.pdf (last visited Sept. 15, 2025)).

(ii) Time of performance (i.e., hours of the day, days of the week, etc.)
(iii) Place of performance of the services.

(2) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

Exhibit 1 at 5 (FAR 52.212-4(c), Contract Terms and Conditions—Commercial Items (MAR 2009)—TAILORED); Exhibit 2 at 78.[3]

II. Executive Orders and Contract Modifications

A. Federal Minimum Wage

In 2014, the President signed Executive Order 13658, which established a $10.10 hourly federal minimum wage for employees on government contracts. 79 Fed. Reg. 9851 (Feb. 12, 2014). The order and the new wage applied only to new contracts entered into after the date of the order. *Id*. at 9853. The order directed the Department of Labor to determine a new wage every year. *Id*. at 9851.

In April 2021, the President signed Executive Order 14026 (Increasing the Minimum Wage for Federal Contractors). 86 Fed. Reg. 22835 (Apr. 30, 2021). Pursuant to this order and the regulations promulgated by the Department of Labor to implement it, the hourly minimum wage on federal contracts increased to $15 on January 30, 2022. *Id*.; 86 Fed. Reg. 67126, 67224 (Nov. 24, 2021). Agencies were directed to insert a clause—into contracts governed by the Service Contract Act and the Fair Labor Standards Act—requiring contractors and subcontractors to pay the new minimum wage payment. 86 Fed. Reg. 22835, 22837. The order was effective upon the exercise of options for existing contracts after January 30, 2022. *Id*. The implementing regulations stated that the requirement would apply "[t]o existing contracts . . . when extending, renewing, or exercising an option on the existing contract on or after the effective date of the rule," which was January 30, 2022. 87 Fed. Reg. 4117 (Jan. 26, 2022). The implementing regulation noted that the executive order did not create or change "any rights under the Contract Disputes Act, 41 U.S.C. § 7101 et seq." 29 CFR 23.10(c) (2022).

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[3] Appellants note that the "tailored" version of this clause is the same as FAR 52.243-1, Changes—Fixed Price (Alternate I) (48 CFR 52.243-1 (2008)).

In June 2023, the parties executed a modification to add the FAR clause that effectuated this executive order. Exhibit 14 (adding FAR 52.222-55, Minimum Wages for Contractor Workers under Executive Order 14026 (JAN 2022) (48 CFR 52.222-55 (2022)). This clause provided that the applicable minimum wage established in January of every year was "incorporated by reference into this contract." FAR 52.222-55(b)(2). The clause provided a mechanism for an adjustment to the contract prices following issuance of the new wage determination:

> The Contractor may request a price adjustment only after the effective date of the new annual [Executive Order (E.O.)] minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

FAR 52.222-55(b)(3)(i). This clause replaced the other price adjustment clause in the contracts and stated that the contracting officer would not provide duplicate payments under those clauses. *Id*. 52.222-55(b)(3)(iii). The clause also stated that the "[c]ontractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause." *Id*. 52.222-55(b)(4). Finally, the clause directed that "disputes concerning contractor compliance" would be resolved by the Department of Labor. *Id*. 52.222-55(h).

On March 14, 2025, the President issued Executive Order 14236, which rescinded Executive Order 14026. 90 Fed. Reg. 13037 (Mar. 20, 2025). The Department of Labor is no longer enforcing Executive Order 14026 or the regulations that it issued to implement it. Final Rule: Increasing the Minimum Wage for Federal Contractors (Executive Order 14026) (https://www.dol.gov/agencies/whd/government-contracts/eo14026 (last visited Sept. 17, 2025)).

B. Paid Sick Leave Benefits

In September 2015, the President signed Executive Order 13706, which required federal contractors to permit their employees to earn paid sick leave. 80 Fed. Reg. 54697 (Sept. 7, 2015). The order was to apply to new contracts covered by the Service Contract Act. 80 Fed. Reg. at 54699; 81 Fed. Reg. 67598 (Sept. 30, 2016); 29 CFR 13.3 (2017).

In June 2023, the parties executed a modification to add the FAR clause that effectuated the paid sick leave order. Exhibit 13 (adding FAR 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (48 CFR 52.222-62 (2022)). This clause required that the contractor allow each employee to earn at least one hour of paid sick leave for every thirty hours worked. FAR 52.222-62(c). Unlike the clause implementing Executive Order 14026, the clause provided no mechanism for the contractor to be reimbursed the cost of providing paid sick leave to employees. The clause also directed that disputes "related to the application of E.O. 13076 to this contract" would be resolved by the Department of Labor. FAR 52.222-62(l).

III. Appellant's Claims

On April 5, 2024, appellants submitted claims to the contracting officer, seeking the costs incurred to comply with the minimum wage and paid sick leave requirements. Nelnet claimed $5,103,345 for the increases in salaries for employees in 2023 and 2024; employer taxes and corresponding wage driven benefits due to the increase in the minimum wage; increases in the fringe rate paid to employees; and increases in salaries due to the requirement to provide paid leave and the costs of its subcontractors to implement the requirements. Notice of Appeal (CBCA 8251), Exhibit B (Nelnet claim) at 1, 15. Great Lakes claimed $197,128 for the increases in salaries for employees; employer taxes; and corresponding wage driven benefits in 2023 due to the increase in the federal minimum wage. CBCA 8250, Notice of Appeal (CBCA 8250), Exhibit B (Great Lakes claim) at 1, 11. Although both claims included a reference to a "quantum spreadsheet," *id*. at 11; Notice of Appeal (CBCA 8251), Exhibit B (Nelnet claim) at 15, the record currently contains no evidence to support the amounts claimed. Education denied the claims in October 2024. Exhibits 19, 20.[4]

IV. Proceedings Before the Board

Appellants filed their appeals in November 2024, and the appeals were consolidated. Order (Nov. 12, 2024) at 1. The parties requested that the Board first determine entitlement and then convene a hearing, as necessary, to determine quantum. Appellants filed their

[4] The Board deemed appellants' claims to be the consolidated complaint and the contracting officer's decisions to be the consolidated answer in these appeals. Order (Dec. 3, 2024) at 2.

motion for summary judgment in January 2025.[5] Education filed a response to the motion, and appellants filed a reply. The Board issued two orders requesting further briefing regarding, among other issues, whether the Board possessed jurisdiction to decide the appeals. Appellants provided responses to the Board's orders, but Education did not.[6] Following the transfer of the appeals to the current presiding judge, the Board issued an order that provided a deadline for Education to respond to the Board's prior orders requesting briefing and warned that, if Education did not respond, the Board would decide the motion on the current record. Education did not respond to the Board's order or provide additional briefing.

Discussion

I. The Board Possesses Jurisdiction to Decide the Appeals

Both clauses under which appellants' claims arise assign responsibility for deciding disputes concerning a contractor's compliance with or related to the application of the requirements to the Department of Labor. FAR 52.222-55(h); FAR 52.222-62(l). These provisions do not eliminate the Board's jurisdiction to decide the appeals because appellants are not challenging the application of the requirements to their contracts. According to their notices of appeal, they have incurred costs complying with the directives of the clauses. Before the Board, appellants seek to recover those costs pursuant to the terms of their contracts. To decide the appeals, the Board will determine the effect of those clauses on appellants' rights under the contracts and possesses jurisdiction to do so. *Burnside-Ott Aviation Training Center, Inc. v. United States*, 985 F.2d 1574, 1580 (Fed. Cir. 1993).

II. Appellants May Recover the Costs of the Application of the Executive Orders

Appellants, by the terms of the original contracts, were obligated to pay the federal minimum wage set pursuant to the Fair Labor Standards Act. In 2014, the President signed an executive order establishing a minimum wage for federal contracts, but that order only applied to new contracts. In 2021, the President signed an executive order increasing the

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[5] Although appellants titled their motion as one for summary judgment, we construe it to be a motion for partial summary judgment because we only decide the issue of entitlement.

[6] Counsel for Education who filed the response to the motion withdrew as counsel on March, 19, 2025. Current counsel for Education filed their notice of appearance on July 1, 2025.

federal minimum wage level again and requiring that it be applied to existing contracts at the time that the contracts were extended or renewed. Appellants became subject to this increased compensation requirement when their contracts were extended in December 2022. 87 Fed. Reg. 4117. The Minimum Wages clause giving rise to appellants' claims provides for a price adjustment for the increased labor costs resulting from the executive order directive. FAR 52.222-55(b)(3)(i).

Appellants seek to recover the increased cost of the higher wage level, pursuant to the Changes clause, arguing that the insertion of the clause into their contracts represents a change that has increased the costs of their performance. Boards and courts have awarded increased labor costs based upon both the Changes clause and the Price Adjustment clause similar to FAR 52.222-55. *E.g.*, *Lockheed Support Systems, Inc. v. United States*, 36 Fed. Cl. 424, 429-30 (1996); *U.S. Contracting, Inc.*, ASBCA 49713, 97-2 BCA ¶ 29,232, at 145,426. Appellants have not briefed the issue of why the Changes clause should be the basis for their claims, although it may be that the Changes clause allows for the recovery of indirect costs of overhead and profit attributable to the increased costs whereas the Minimum Wages clause does not. *Id*. We defer a decision on whether appellants may recover the indirect costs and only determine now that appellants have established entitlement to the increased costs, subject to additional proof of quantum.

Education presents three arguments as to why appellants may not recover on their claims. First, Education asserts that the EPA clause in the contracts precludes any price adjustment because any increased costs that appellants incur, including labor costs, are accounted for by this clause.[7] The original contracts included both the EPA clause and the Price Adjustment clause (FAR 52.222-43). If Education were correct in its assertion, FAR 52.222-43 would be superfluous. A central tenet of contract interpretation is that the contract is to be read as a whole and all parts are to be given meaning. *Bell/Heery v. United States*, 739 F.3d 1324, 1331 (Fed. Cir. 2014). Therefore, the Price Adjustment clause and the EPA clause serve different purposes, and the presence of the EPA clause is not a bar to appellants' claims. *See Centel Communications Co.*, GSBCA 8218, 89-1 BCA ¶ 21,225, at 107,068-69 (1988).

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[7] Education asserts in its brief, without citation to proposed findings or other documentary evidence, that the parties negotiated this clause. Respondent's Opposition to Appellant's Motion for Summary Judgment at 1, 2-3. Appellants state that the contracts included the clause but provide no information as to its origin. *See* Appellant's Statement of Undisputed Facts ¶ 11. Because the solicitation is not in the appeal file, we do not know whether this clause was part of the terms of the solicitation issued by Education or was inserted later. Given our resolution of this issue, we need not consider this argument further.

Second, Education asserts that FAR 52.222-55 precludes any price adjustment because that clause contains a warranty that the prices do not include an allowance for any contingency to cover increased costs. Education argues that the EPA clause is such an allowance so appellants cannot fulfill the terms of the warranty. Education misapprehends the function of the warranty provision. The warranty is a promise by the contractor that it has not escalated its future labor costs. *Corrections Corporation of America v. Department of Homeland Security*, CBCA 2647, 15-1 BCA ¶ 35,971, at 175,744-45. "The underlying purpose of the clause is essentially to eliminate the possibility of contractors overestimating future labor rate increases in order to protect themselves and thereby unnecessarily increasing government contract costs." *Id*. at 175,743 (quoting *IBI Security Service, Inc*., 69 Comp. Gen. 707, 710 (1990), *modified on other grounds*, 1991 WL 73003 (Feb. 13, 1991)). The original contracts contained the same warranty in FAR 52.222-43, and this warranty was a promise by appellants that their rates did not contain future increases so that they could receive future wage adjustments. That promise is not a bar to appellants' claims for the increased costs now.

Third, Education asserts that the contracts are fixed-price contracts and that appellants bore the risk of cost increases. While it is true that fixed-price contracts shift the risk of cost increases to the contractor, *Dalton v. Cessna Aircraft Co.*, 98 F.3d 1298, 1305 (Fed. Cir. 1996), the regulatory definition of a fixed-price contract allows that the contract price may be adjusted "by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances." FAR 16.201(a). As described above, the contracts contain clauses that permit increases for wage adjustments and other charges, and the fixed-price nature of the contracts is not a bar to appellants' claims.

III. Nelnet May Recover Costs of Providing Paid Leave

Nelnet also seeks to recover the costs that it incurred to allow its employees to earn paid sick leave. This new requirement was imposed upon Nelnet when the FAR 52.222-62 clause was added to its contract. Nelnet seeks the increased costs of this requirement pursuant to the Changes clause, as an increased cost of performance of its contract. FAR 52.222-62 does not contain provision for reimbursement or adjustment, but FAR 52.222-43(d) provides for adjustments to the contract price for "Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with . . . [a]n increased or decreased wage determination otherwise applied to the contract by operation of law." Under one of these clauses, Nelnet is entitled to recover the increased cost of providing paid leave. We defer a determination as to which clause applies to when we determine quantum.

In its brief, Education does not argue specifically against Nelnet's ability to recover these costs, but the contracting officer, in the decision on Nelnet's claim, asserted that Education was not required to reimburse Nelnet for the increased costs of paid sick leave based upon the terms of FAR 52.222-62(g), which provides that the obligations of the clause are in addition to those obligations to provide benefits under the Service Contract Act.

> The paid sick leave required by E.O. 13706, 29 CFR part 13, and this clause is in addition to the Contractor's obligations under the Service Contract Labor Standards statute and the Wage Rate Requirements (Construction) statute, and the Contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of E.O. 13706 and 29 CFR part 13.

52.222-62(g); *see* 81 Fed. Reg. at 67642. A plain reading of this provision does not support the idea that this provision is a bar to Nelnet's claim. Instead, the provision states that the requirement to provide paid leave is in addition to other benefits that Nelnet was required to provide pursuant to statute.

Decision

Appellants' motion for partial summary judgment is granted. The Board will issue a separate order regarding proceedings to decide quantum.

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

We concur:

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

Daniel B. Volk
DANIEL B. VOLK
Board Judge