UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: September 2, 2026

CBCA 8407, 8408

MAXIMUS EDUCATION, LLC dba AIDVANTAGE,

Appellant,

v.

DEPARTMENT OF EDUCATION,

Respondent.

Ruth El and Hal J. Perloff of Husch Blackwell LLP, Washington, DC, counsel for Appellant.

Candice Jackson, Gary L. Charles, Jr., and Daniel B. De Vito, Office of the General Counsel, Department of Education, Washington, DC, counsel for Respondent.

Before Board Judges **SHERIDAN**, **KANG**, and **NEWSOM**.

NEWSOM, Board Judge.

The issue in these consolidated appeals concerns how a minimum wage clause and an economic price adjustment (EPA) provision should be interpreted together. Maximus Education, LLC dba Aidvantage (Maximus) entered into contracts with the Department of Education (DOE) to provide student loan processing services. Each contract included an EPA provision requiring price adjustments for inflation and a Federal Acquisition Regulation (FAR) clause requiring the contractor to pay employees a federal contractor minimum wage, which was also adjusted for inflation. The agency denied the contractor's claims for amounts to cover the cost of paying the minimum wage, arguing that the contractor's sole remedy for

inflationary cost increases was through the EPA provisions. We hold that each clause concerns distinct matters, that the EPA provisions do not override the minimum wage clauses, and that the contractor is entitled to recover most, but not all, of its claimed costs.

Background

We deem the following facts to be undisputed based on the statements of undisputed material facts and record evidence. *See Avue Technologies Corp. v. Department of Health & Human Services*, CBCA 8087(6360)-REM, et al., 24-1 BCA ¶ 38,617, at 187,709 n.1; Board Rule 8(f)(1), (2) (48 CFR 6101.8(f)(1), (2) (published in eCFR)).

Maximus entered into two contracts with DOE requiring the contractor to service federal student loans. The first was contract number ED-FSA-09-D-0015 (Legacy contract), which was executed on June 17, 2009, between DOE and Maximus's predecessor. Appeal File, Exhibit 1 (CBCA 8407) at 2.[1] Through a series of modifications, DOE extended the period of performance through 2023 and novated the contract to Maximus. Exhibit 9 (CBCA 8407) at 150-51. The Legacy contract incorporated the changes clause for commercial items contracts (Contract Terms and Conditions–Commercial Items, (MAR 2009)–TAILORED). Exhibit 1 (CBCA 8407) at 7; *see* 48 CFR 52.212-4 (2008).

In April 2023, Maximus entered into a second federal student loan servicing contract with DOE, this time under the agency's Unified Servicing and Data Solution (USDS) program through contract number 91003123D0001 (USDS contract). Exhibit 2 (CBCA 8408) at 142,172. It has a five-year base period extending through 2028. *Id.* at 145. The two contracts overlapped from April through December 2023, when the Legacy contract ended.

Significantly, both contracts included an EPA provision requiring DOE annually to adjust the contract prices, up or down, based upon specified inflation indexes established by the Bureau of Labor Statistics (BLS). Exhibit 1 (CBCA 8407) at 18; Exhibit 2 (CBCA 8408) at 239-40. As explained below, the EPA provisions limited these pricing adjustments to a fraction of the inflation rate.

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[1] This decision resolves two appeals, each concerning a different contract. Because each appeal has a separate appeal file, the exhibit citations identify the CBCA docket number. All exhibits are found in the designated appeal file unless otherwise noted. Page citations are to the Bates numbers on the exhibits with leading zeros omitted.

Executive Order 14026 and FAR 52.222-55

In April 2021, the President signed Executive Order (EO) 14026, Increasing the Minimum Wage for Federal Contractors. 86 Fed. Reg. 22835 (Apr. 27, 2021). This EO established a new hourly minimum wage for workers employed in the performance of federal contracts at $15, starting in January 2022.[2] *Id*. To implement the EO, the Federal Acquisition Regulatory Council revised FAR 52.222-55 and issued an interim rule requiring its incorporation into affected contracts. 87 Fed. Reg. 4117 (Jan. 26, 2022); 48 CFR 22.1906 (2022); *see* 48 CFR 52.222-55 (Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022)).

EO 14026 directed the Secretary of Labor to adjust this minimum wage each year "by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers." 3 CFR 551 (2022). FAR 52.222-55 stated that a contractor could request an adjustment to contract prices following a change in the minimum wage, but it required the contractor to warrant 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." FAR 52.222-55(b)(3)(I), (b)(4). Maximus asserts that it did not include an allowance for minimum wage changes in its proposed prices for the USDS contract. Appellant's Statement of Undisputed Material Facts (CBCA 8408), Exhibit A, Willis Declaration (July 2, 2025) ¶ 5.[3]

Impact of FAR 52.222-55 on Each Contract and Contractor Requests for Rate Adjustments

The Legacy contract was awarded in 2009, well before EO 14026 was signed in 2021. On June 13, 2023, DOE unilaterally modified the Legacy contract to incorporate FAR 52.222-55, thereby obligating Maximus to pay its employees the minimum wage in

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[2] Previously, in 2014, EO 13658 established a $10.10 hourly minimum wage for federal contractors, with annual adjustments for inflation. Establishing a Minimum Wage for Contractors, 79 Fed. Reg. 9851 (Feb. 12, 2014). By January 1, 2022, the federal contractor minimum wage under EO 13658 wage had risen to $11.25 hourly. Minimum Wage Notice of Rate Change in Effect as of January 1, 2022, 86 Fed. Reg. 51683 (Sept. 16, 2021). EO 14026 superseded EO 13658 and increased the hourly minimum wage from $11.25 to $15, an increase of more than 30 percent. *See id*.; 86 Fed. Reg. at 22836-37.

[3] In both dockets, appellant attached, as Exhibit A to its statement of undisputed material facts, declarations of its executive responsible for overseeing the management of both the Legacy and USDS contracts. Exhibit A references herein identify the docket number in which appellant submitted these declarations.

accordance with that EO. Exhibit 3 (CBCA 8407) at 83-84. In August 2023, Maximus requested an equitable adjustment and a rate adjustment in the Legacy contract to cover the increased costs caused by the higher minimum wage. Exhibit 4 (CBCA 8407). DOE denied the request. Exhibit 7 (CBCA 8407) at 140.

The USDS contract was signed in April 2023, after EO 14026 was issued, and it incorporated FAR 52.222-55 from inception. Exhibit 2 (CBCA 8408) at 213. Accordingly, Maximus was obligated to pay its employees performing work on that contract the applicable hourly minimum wage from the start of the performance period. In January 2023, as a result of inflation adjustments, that hourly minimum wage was $16.20. In September 2023, the Secretary of Labor increased the minimum wage from $16.20 to $17.20 per hour, effective January 2024. *See* Minimum Wage Notice of Rate Change in Effect as of January 1, 2024, 88 Fed. Reg. 66906 (Sept. 28, 2023). On January 31, 2024, Maximus requested a price adjustment on the USDS contract to compensate it for the minimum wage increase. Exhibit 3 (CBCA 8408). DOE denied the request. Exhibit 5 (CBCA 8408) at 252-53.

Claims and Final Decisions

On October 30, 2024, Maximus submitted two certified claims, one for each contract, seeking to recover costs to comply with FAR 52.222-55. For the Legacy contract, Maximus sought $3,107,058.21 for costs incurred during calendar year 2023. Exhibit 8 (CBCA 8407) at 146-47. For the USDS contract, Maximus sought $1,332,868.76 for costs incurred during calendar year 2024. Exhibit 6 (CBCA 8408) at 255. The contracting officer denied both claims. Exhibit 9 (CBCA 8407); Exhibit 7 (CBCA 8408).

On March 14, 2025, the President issued EO 14236, which rescinded EO 14026. 90 Fed. Reg. 13037 (Mar. 14, 2025).

Discussion

I. Standard of Review

The Board resolves these appeals on appellant's motions for summary judgment. We grant a motion for summary judgment only if the moving party "is entitled to judgment as a matter of law based on undisputed material facts." *JITA Contracting, Inc. v. Department of Transportation*, CBCA 7269, et al., 25-1 BCA ¶ 38,778, at 188,501 (quoting *Mission Support Alliance, LLC v. Department of Energy*, CBCA 6477, 20-1 BCA ¶ 37,657, at 182,834 (quoting Rule 8(f))). In addressing each motion, we draw factual inferences in favor of the non-movant. *See Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390-91 (Fed. Cir. 1987).

In its answer, DOE pleaded that it "denies entitlement and quantum" in these appeals. Consolidated Answer ¶ D. Yet the Government did not file any briefs in opposition to the motions for summary judgment, and, apart from filing an answer, the Government made virtually no effort to litigate this dispute.[4] In the absence of any government briefs, the Board relied on the contracting officer's decisions denying the claims, plus the consolidated answer, to articulate what we believe to be the basis for the Government's opposition. Recognizing that the appellant bears the burden of proof, the Board examined the record provided by the appellant carefully to ascertain if there are material issues of disputed fact and found none.

II. Entitlement

This Board previously confronted this issue in *Great Lakes Educational Loan Services, Inc. v. Department of Education*, CBCA 8250, et al., 25-1 BCA ¶ 38,915. In that appeal, the Board held that the EPA provision in a student loan servicing contract did not bar the contractor from obtaining a price adjustment for federal contractor minimum wage increases under FAR 52.222-55, although the Board did not address quantum. *Id*. at 189,419-20. Here, relying on *Great Lakes*, we conclude that the contractor is entitled to price adjustments in accordance with the Changes clause and FAR 52.222-55 and that the

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[4] The Government never filed the Rule 4 appeal files and did not file an answer until the appeals had been pending for more than five months. By order dated July 3, 2026, the Board reminded the Government that its responses to the motions for summary judgment were due August 1, 2025. The Government filed no response. By order dated August 5, 2025, the Board noted that the "[G]overnment has filed neither a response to the motion for summary judgment, nor any request for an extension of time to respond" and notified the parties that it "deems the briefing on summary judgment to be complete." Three days later, the Government filed a motion for enlargement of time to file an opposition to the summary judgment motions. By order dated August 19, 2025, the Board noted that the Government's motion for enlargement "does not provide sufficient rationale for the Board to allow a late filing" and directed the Government to provide additional information. In response, the Government stated that it "acknowledges [its] past lapses" and promised that it will "strictly comply with Board rules and orders going forward." Based upon that promise, the Board established a new due date for the Government's opposition briefs, this time on October 15, 2025. Then, due to a lapse in appropriations, many federal agencies shut down during October and early November 2025. After operations resumed, by order dated November 21, 2025, the Board established yet another due date for the Government's opposition to the motions, this time on December 12, 2025. The Government filed no response. On December 22, 2025, the Board issued an order closing briefing.

EPA provisions in the contracts do not bar recovery. We determine that Maximus is entitled to most, but not all, of the costs it seeks.

Executive Order 14026 and FAR 52.222-55 impacted each of Maximus's contracts differently because of a difference in timing. Accordingly, we address each contract separately below.

A. Legacy Contract

The Legacy contract was awarded in 2009, and, after EO 14026 was signed in 2021, the respondent unilaterally modified the contract to incorporate FAR 52.222-55. Maximus argues that this modification was a contract change, entitling it to the costs it incurred because of the change. Clearly, this is correct. The insertion of FAR 52.222-55 into the Legacy contract was a contract change. The straightforward and uncontroversial conclusion is that, if FAR 52.222-55 increased Maximus's costs, the Government must compensate the contractor in accordance with the changes clause. *See* Exhibit 1 (CBCA 8047) at 7 (paragraph (c)(1)(2)). An economic price adjustment clause does not bar recovery under the Changes clause. *Great Lakes*, 25-1 BCA at 189,419; *see Lockheed Support Systems, Inc. v. United States*, 36 Fed. Cl. 424, 429-30 (1996).

B. USDS Contract

The USDS contract included FAR 52.222-55 from the contract's inception in 2023, and, accordingly, Maximus was obligated to pay its employees who performed work on the contract the applicable minimum wage from the start of the performance period. Exhibit 2 (CBCA 8408) at 213. Maximus, therefore, does not argue that it is entitled to the costs of a contract change. Rather, Maximus contends that the clause itself entitles it to a price adjustment for the increase in the minimum wage for calendar year 2024.

FAR 52.222-55 mandates a price adjustment for increased labor costs resulting from an increase in the minimum wage, stating plainly that "[*p*]*rices will be adjusted* only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual [EO] minimum wage, and for associated labor costs (including those for subcontractors)." FAR 52.222-55(b)(3)(I) (emphasis added). Effective January 1, 2024, the federal contractor minimum wage increased from $16.20 to $17.20 per hour. 88 Fed. Reg. 66906. Accordingly, under a straightforward application of the Changes clause and the minimum wage clause, Maximus is entitled to a price adjustment.

C. Respondent's Grounds for Denying the Claims

The contracting officer rejected both claims, arguing that EPA provisions provided the only remedy for inflationary cost increases, including minimum wage increases. This argument came in two flavors. First, the contracting officer noted that the minimum wage clause required a contractor to warrant 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." Exhibit 9 (CBCA 8407) at 151 (quoting FAR 52.222-55(b)(4)). The contracting officer argued that Maximus could not provide this warranty because the EPA provision in the contract was an allowance for the contingency of an increase in the federal contractor minimum wage. According to the contracting officer, because Maximus could not satisfy the warranty, it was not entitled to a price adjustment under FAR 52.222-55.

That conclusion is plainly wrong for the obvious reason that the EPA provisions are not price allowances but rather *cost-sharing* provisions that are designed to compensate the contractor only partially for inflationary cost increases. As we stated in *Great Lakes*, the minimum wage clause and the EPA provision "serve different purposes." 25-1 BCA at 189,419. As explained in EO 14026, the purpose of the minimum wage clause was to require contractors to increase pay for their lowest-paid workers. 86 Fed. Reg. 22835. In contrast, the purpose of the EPA provision is to enable the parties to share cost risk "to protect the contractor and the Government against significant fluctuations in labor or material costs." 16 CFR 203-3.

Not surprisingly, in light of their different purposes, the clauses operated differently and resulted in different adjustments. FAR 52.222-55 directed that a contractor is entitled to a price adjustment for the *full amount* of its increased minimum wage cost, stating that prices "*will be adjusted* only for increased labor costs." It imposes no thresholds or caps. FAR 52.222-55(b)(3)(I) (emphasis added). In contrast, the EPA provisions require price adjustments only if the inflation rate is higher than a specified threshold. The contractor bears the risk of cost increases up to the threshold, and the Government bears the risk of cost increases over the threshold (up to a point). For the Legacy contract, that threshold was 3.0 percent. Exhibit 1 (CBCA 8407) at 18. For example, if the inflation rate was 3.6 percent, DOE would adjust Legacy contract prices by only 0.6 percent. If, on the other hand, the inflation rate was 2.5 percent, contract prices would not be adjusted at all.

For the USDS contract, the threshold was 3.5 percent, but the USDS contract also capped the price adjustment at 3.0 percent. Exhibit 2 (CBCA 8408) at 240. For example, if the inflation rate was 7.0 percent, DOE would only increase contract prices in the USDS contract by 3.0 percent. The EPA provisions therefore cannot reasonably be considered a price contingency for increases in the minimum wage. At most, the EPA provisions allowed

for only a fraction of minimum wage increases and, in some circumstances, applied not at all.[5]

Next, the contracting officer argued that Maximus "waived its right" to claim any additional costs under EO 14026 or FAR 52.222-55. Exhibit 9 (CBCA 8407) at 152; Exhibit 7 (CBCA 8508) at 264. We found no waiver language in either contract or anywhere else stating that Maximus waived its rights under EO 14026 or FAR 52.222-55. Indeed, it is particularly unpersuasive to suggest that, in the Legacy contract—which predated EO 14026 by eleven years—Maximus waived rights conferred by an executive order that did not even exist when pricing was established. Moreover, FAR 52.222-55 was added to Maximus's contract by unilateral modification, rather than a bilateral agreement between Maximus and DOE.

Finally, the contracting officer stated that the USDS contract included annual price escalations and contended that these escalations were meant to compensate the contractor for minimum wage increases. He cited no evidence. *See* Exhibit 7 (CBCA 8408) at 263. To the contrary, Maximus submitted a sworn declaration stating that it did not include any allowances in its pricing for future increases in the contractor minimum wage. Exhibit A (CBCA 8408), Willis Declaration ¶ 5. Furthermore, DOE did not provide a price increase to compensate Maximus for changes to the minimum wage. *Id*.

For these reasons, we hold that Maximus is entitled to adjustments under FAR 52.222-55.

III. Quantum

Maximus seeks two categories of costs: (1) the value of the additional wages that FAR 52.222-55 required it to pay its employees, plus associated payroll taxes; and (2) the costs it incurred to remedy "compression" of its workforce wage structure.

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[5] The evidence shows that Maximus's additional costs from the minimum wage clause were substantially higher than the potential adjustments under the EPA provisions. When EO 14026 superseded EO 13658, it increased the minimum wage from $11.25 to $15 per hour, an increase of more than 30 percent. *See* 86 Fed. Reg. at 22836-37. Furthermore, effective January 2024, the Secretary of Labor increased the contractor minimum wage from $16.20 to $17.20 per hour, an increase of approximately 6.0 percent. This was double the 3.0-percent maximum EPA increase allowed under the USDS contract. *See* Exhibit 2 (CBCA 8408) at 240; Exhibit A (CBCA 8408), Willis Declaration ¶ 4.

A. Additional Minimum Wage Costs

FAR 52.222-55 required contract prices to be adjusted for "increased labor costs" and "[a]ssociated labor costs," which expressly include Social Security and unemployment taxes and workers compensation insurance but do not include general and administrative costs, overhead, or profit. FAR 52.222-55(b)(3)(I).

Maximus submitted declarations attesting to the amounts it expended to comply with the minimum wage clause and explaining how it calculated those amounts. Exhibit A (CBCA 8407), Willis Declaration ¶¶ 6-8; Exhibit A (CBCA 8408), Willis Declaration ¶¶ 6-9. For the Legacy contract, Maximus only seeks costs incurred during 2023, the last year of the contract. Maximus determined the employees who were earning less than the minimum wage prior to the incorporation of the minimum wage clause into the contract, the amount that each employee's wages increased, and the number of hours they worked during 2023, then multiplied the number of hours times the amount of the pay increases required by the clause. Then it calculated the additional Social Security and unemployment taxes and workers compensation insurance it paid on the wage increase. For 2023, the Legacy contract total was $2,058,326.16. Exhibit A (CBCA 8407), Willis Declaration ¶ 7.

For the USDS contract, Maximus seeks only the costs it incurred in 2024 to pay the increase in the minimum wage required that year. As noted above, in 2024, the minimum wage increased from $16.20 to $17.20 per hour. *See* 88 Fed. Reg. 66906. Maximus determined the number of employees who earned the minimum wage in 2023 and the number of hours they worked during 2024. Then it multiplied the number of hours times the amount of the increase and calculated the Social Security and unemployment taxes and workers compensation insurance it paid on the increase. For 2024, the USDS contract total was $1,226,600.23.

Adding these two totals together, we find that Maximus is entitled to $3,284,926.39 in additional costs arising out of the minimum wage clause, FAR 52.222-55. This total does not include interest required in accordance with the Contract Disputes Act (CDA), 41 U.S.C. § 7109 (2024).

B. Compression Costs

Maximus also seeks to recover the costs that it incurred to remedy "wage compression." Maximus contends that, as a result of the increase in the minimum wage, its lower-paid, less-experienced workers began earning the same or nearly the same wages as more-experienced workers performing more complex tasks. Apparently, Maximus deemed this result undesirable, so it increased the wages of the higher-paid employees. It now seeks

to recover the costs of the increase in wages that it paid to higher-paid employees to avoid wage compression.

We conclude that Maximus is not entitled to the costs it incurred to remedy wage compression under the Changes clause or the minimum wage clause. Maximus's decision to increase the wages for its higher-paid employees was its own business decision, not required by the minimum wage clause. As the United States Court of Appeals for the Federal Circuit found in *Call Henry, Inc. v. United States*, price-adjustment clauses do not shift the risk of a contractor's independent marketplace judgments to the Government. 855 F.3d 1348, 1356 (Fed. Cir. 2017).

Furthermore, the costs to remedy wage compression are not "labor costs" for which a price adjustment is required under FAR 52.222-55. During the notice and comment rulemaking process for the Department of Labor's proposed regulations implementing EO 14026, the Government addressed several comments about wage compression costs, including comments submitted by Maximus. The final rule explained that "although contractors may voluntarily raise the wages of such workers to avoid wage compression or maintain fairness, doing so is not a requirement of compliance with Executive Order 14026 or the rule." Increasing the Minimum Wage for Federal Contractors, 86 Fed. Reg. 67126, 67211 (Nov. 24, 2021).

Decision

Appellant's motions for summary judgment are granted in part, and these appeals are **GRANTED IN PART**. Appellant is entitled to payment of $3,284,926.39 in additional costs arising out of the minimum wage clause plus CDA interest, calculated from October 30, 2024.

Elizabeth W. Newsom
ELIZABETH W. NEWSOM
Board Judge

We concur:

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

Jonathan L. Kang
JONATHAN L. KANG
Board Judge