

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

GRANTED IN PART: August 5, 2004

GSBCA 16169-SSA

MCI WORLDCOM COMMUNICATIONS, INC.,

Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

Thomas C. Wheeler and Eliza P. Nagle of Piper Rudnick LLP, Washington, DC, counsel for Appellant.

Seth Binstock, Office of General Law, Social Security Administration, Baltimore, MD, counsel for Respondent.

Before Board Judges **PARKER**, **NEILL**, and **HYATT**.

NEILL, Board Judge.

On August 23, 2000, the Social Security Administration (SSA) awarded a contract to MCI WORLDCOM Communications, Inc. (MCI). Under the contract, MCI was to provide a network-based services solution to replace SSA's existing premise-based automatic call distributors. Following installation of MCI's system, a dispute arose regarding the price for monthly recurring services to be paid by SSA under the contract. The unit price in question for these monthly services is expressed on a "per port" basis. The parties, however, are in disagreement on the meaning of "port" as used for this contract line item (CLIN). SSA contends that the number of ports for which MCI is entitled to compensation under this CLIN equates to the number of circuits provisioned. MCI contends instead that the number equates to 12,320, the number of call stations it is required to provide under the contract.

MCI, believing that resolution of this dispute turns solely on the actual contract language and that there are no issues of material fact, has filed a motion for summary relief. We agree with the appellant that this case is amenable for disposition by summary relief and, for the reasons set out below, grant the motion in part.

Uncontested Facts

In accordance with Board Rule 108(g), MCI filed a Statement of Uncontested Facts with its motion for summary relief. Pursuant to the same rule, government counsel filed a Statement of Genuine Issues in which, by reference to specific paragraph numbers in the movant's Statement of Uncontested Facts, opposing counsel is required to identify those facts as to which he believes there is a genuine issue necessary to be litigated. 48 CFR 6101.8(g) (2003).

In his Statement of Genuine Issues, counsel for SSA questions the relevance of some of the sixty-two uncontested facts listed by appellant in its Statement of Uncontested Facts. Counsel also takes issue with certain inferences which he believes appellant attempts to draw from these facts. Nevertheless, government counsel actually disputes only two of the sixty-two facts listed by appellant as uncontested.

We set out below, by way of background, the uncontested facts proposed by appellant which we believe to be relevant to this dispute and which have not been disputed by SSA. The numbering assigned to the facts and the text of the facts as well as the footnotes are as they appear in MCI's original submission. We have taken the liberty in a few places to modify the text slightly for the sake of format or to protect the confidentiality of a limited amount of protected material.

The Contract

1. MCI is a corporation incorporated under the laws of Delaware with corporate headquarters in Ashburn, Virginia. The Government Markets Group of MCI is located at 1945 Old Gallows Road, Vienna, Virginia. Declaration of Susan Zeleniak (Zeleniak Declaration) (Apr. 6, 2004) ¶ 2.

2. The SSA is an agency of the United States Government. Its Office of Acquisition & Grants is located at 1710 Gwynn Oak Avenue, Baltimore, Maryland. Complaint ¶ 2 (admitted).

3. The SSA provides a toll-free calling service to the general public to furnish information regarding the various benefit and insurance programs administered by the SSA. Historically, the SSA has received more than 75 million toll-free calls per year. Complaint ¶ 5 (admitted).

4. On August 23, 2000, the SSA awarded contract no. 0600-00-40649 (the contract) to MCI. Complaint ¶ 4 (admitted); Appeal File, Exhibit 52. The contract calls for MCI to utilize a network-based solution to distribute to SSA's employees the toll-free calls that SSA receives from the general public. Appeal File, Exhibit 52 at B-2; Complaint ¶ 4; Answer ¶ 4.

5. The SSA maintains thirty-eight call centers throughout the United States where its employees receive the toll-free calls. Complaint ¶ 6 (admitted). The SSA's call centers are in the following locations: Albuquerque, New Mexico; Auburn, Washington; Baltimore, Maryland (300 N. Green Street); Baltimore, Maryland (1500 Woodlawn Avenue); Birmingham, Alabama; Boston, Massachusetts; Chicago, Illinois; Cincinnati, Ohio; Cleveland, Ohio; Des Moines, Iowa; Detroit, Michigan; East Brunswick, New Jersey; Fort

Lauderdale, Florida; Golden, Colorado; Grand Prairie, Texas; Honolulu, Hawaii; Houston, Texas; Indianapolis, Indiana; Jamaica, New York; Jersey City, New Jersey; Kansas City, Missouri; Los Angeles, California; Manassas, Virginia; Milwaukee, Wisconsin; New Orleans, Louisiana; Philadelphia, Pennsylvania; Phoenix, Arizona; Pittsburgh, Pennsylvania; Portland, Oregon; Richmond, California; Saddlebrook, New Jersey; St. Louis, Missouri; Salinas, California; San Diego, California; San Juan, Puerto Rico; Tampa, Florida; Twin Cities, Minnesota; and Wilkes-Barre, Pennsylvania. Appellant's Request for Admissions ¶ 9 (admitted).¹

6. The contract with MCI provides for an eight-month start-up period, a base year, and six option years. The contract has a potential duration of ninety-two months if all option periods are exercised. Appellant's Request for Admissions ¶¶ 4, 5 (admitted).

The Original Request for Proposals

7. The contract resulted from a competitive procurement that began with the SSA's issuance of request for proposals no. SSA-RFP-00-3929 (the RFP) on or about October 20, 1999. Appellant's Request for Admissions ¶ 2 (admitted).

8. The SSA drafted the RFP. Appellant's Request for Admissions ¶ 3 (admitted).

9. Section A of the RFP, entitled "Supplies and Services and Prices/Cost," included instructions for completing the RFP Pricing Tables. As originally issued, the RFP contained a Table A for Unit Prices and Tables B through H for Evaluation Pricing. The RFP stated that "the Government will not pay prices other than those listed on the Unit Price Table A." Appeal File, Exhibit 1 at A-1.

10. CLIN 1002 on the RFP's Pricing Tables was for "Recurring Monthly Unit Prices." The RFP listed CLIN 1002 only on Table A, the Unit Price Table, and on Table C, Evaluation Pricing for Recurring Services. Appeal File, Exhibit 1 at A-11, A-20.

11. On Pricing Table A, the SSA included a Unit of Measure column where the SSA entered "the anticipated unit basis for the prices." Appeal File, Exhibit 1 at A-2. For CLIN 1002, the SSA's Unit of Measure was "port." *Id.* at A-11. Pricing Table A did not include any quantities. *Id.*

12. In the RFP, Addendum D-1, entitled "Glossary of Terms," the SSA provided a definition of "port" as follows: "The interface between the contractor's solution and the Government's functionality." Appeal File, Exhibit 1, Addendum D-1 at 6.

13. In the instructions for Pricing Table A, the SSA stated that "the offeror shall provide pricing for Solution Costs and Staffing Growth at a flat rate per active port." Appeal File, Exhibit 1 at A-3.

¹ The SSA's Responses to Appellant's Interrogatories and Request for Admissions, dated February 27, 2004, are provided in Appellant's Supplemental Appeal File, Exhibit A-6.

14. In Addendum D-1, the SSA provided a definition of "active port" as follows:

A position encumbered on the contractor's solution that provides all necessary functionality, software, hardware, etc., associated with that position (e.g., a call representative is one active port and it encumbers a termination on the contractor's solution, all relative hardware, software, wiring, etc., yet it [sic] still one active port).

Appeal File, Exhibit 1, Addendum D-1 at 1.

15. In the instructions for Evaluation Pricing Table C, the RFP stated that "this table provides for the evaluation of recurring 'per active port' unit prices." Appeal File, Exhibit 1 at A-4. The RFP stated for the Monthly Unit Price that offerors should "list the price per unit of each item from Table A." Id. at A-5. For Quantity, the SSA entered the "evaluated phased-in solution quantities." Id. For Monthly Evaluated Price, the RFP instructed the offeror to multiply "the unit prices for each item by the quantities for each period." Id.

16. In the RFP as originally issued, Evaluation Pricing Table C included a three-phase series of quantities for Recurring Monthly Unit Prices. The monthly quantities were: Phase 1 Service, 4622; Phase 2 Service, 4200; and Option Phase 3 Service, 1778. The total quantity for the three phases was 10,600. Appeal File, Exhibit 1 at A-20.²

17. In the RFP, Section B, entitled "Mandatory Specifications," the SSA stated that "we currently have over ten thousand (10,000) employees working in some capacity to answer incoming N8NN [national 800 number network] calls to our call centers." Appeal File, Exhibit 1 at B-4. The SSA also stated that "the solution must be capable of successfully processing without blockage 10,000 simultaneous calls enterprise-wide." Id.

18. On November 12, 1999, MCI submitted a series of questions to Mary Biddle, the SSA's contracting officer, regarding the RFP. Appeal File, Exhibit 3. MCI's Question 3 stated as follows:

Question: The terms Port, Station, and Center are frequently used as units of measure in the pricing tables. It is difficult to interpret the implied difference in meaning between these terms, although they are defined (with the exception of Center) in Addendum D-1, GLOSSARY OF TERMS. For example, CLIN's 2019-2050 use Port and CLIN's 2059-2068 use Station and CLIN's 2119-2126 use Center, but they all seem to refer to Call Answering Locations. It is not clear whether the total number of Ports, Stations, Centers, and Call Answering Locations equal each other and how they differ in function. Will the Government please further clarify the meaning of these respective terms and their intended use in the pricing tables?

² The SSA later changed these quantities to a total of 12,320 units in amendment five to the RFP. (See Uncontested Fact 30 below.)

Id. at Q2-1.

19. In a November 22, 1999, SSA memorandum from Mary Biddle to Michael Roche, the contracting officer commented on MCI's Question 3 above by stating: "The distinction between a port and station seems to still be a problem with several vendors. Apparently we need to better clarify the RFP." Appeal File, Exhibit 8 at 5.

20. The SSA issued eight amendments during the competitive procurement process. Appellant's Request for Admissions ¶ 10 (admitted).

Amendment Two of the RFP

21. In RFP amendment two, issued on December 20, 1999, the SSA provided clarifications/answers to questions/inquiries that had been submitted by prospective offerors. Appeal File, Exhibit 10. Among the SSA's clarifications and answers were the following:

Question 2 - In the evaluation process, does port equal agent?

Answer - Port is equal to any station equipment and/or software (e.g., voice mail).

....

Question 8 - The Unit Type for Phase-In-Solution Costs is price per port. The quantities provided are equal to the number of positions. Is there a 1:1 ratio between ports and positions/stations?

Answer - Yes, there is a one-to-one ratio.

....

Question 13 - The terms Port, Station, and Center are frequently used as units of measure in the pricing tables. It is difficult to interpret the implied difference in meaning between these terms, although they are defined (with the exception of Center) in Addendum D-1, GLOSSARY OF TERMS. For example, CLIN's 2019-2050 use Port and CLIN's 2059-2068 use Station and CLIN's 2119-2126 use Center, but they all seem to refer to Call Answering Locations. It is not clear whether the total number of Ports, Stations, Centers, and Call Answering Locations equal each other and how they differ in function. Will the Government please further clarify the meaning of these respective terms and their intended use in the pricing tables?^[3]

³ As noted in paragraph 18 above, MCI had submitted this question on November 12, 1999. Appeal File, Exhibit 3 at Q2-1.

Answer - See revised Addendum D-1 for revised definition of: Center, Call Answering Locations, Ports, and Stations. Also, see revised Pricing Table A.

....

Question 16 - Please provide a definition of "per active port." Would this include ports for all SPIKES for each phase assuming that all SPIKES will be working simultaneously?^[4]

Answer - Again, port is equal to any station equipment and/or active software. A SPIKE station is station equipment and qualifies as a port. See revised Addendum D-1 Glossary of Terms.

....

Question 23 - In Unit Price Table A, vendors are to provide prices -- both start-up and recurring for CLIN's 1001 and 1002 -- as measured by port. Please discuss whether this measure is port or active port. (See Glossary definitions in Addendum D-1 Glossary of Terms).

Answer - See revised Pricing Table A.

Id., Responses to Questions.

22. In RFP amendment two, Pricing Tables A and C, the SSA eliminated the three-phase implementation of recurring monthly services. Appeal File, Exhibit 10 at A-11, A-20. In Table A, the Unit Price Table, the SSA's Unit of Measure column still indicated "port." Id. at A-11. In Evaluation Table C, the RFP now indicated that the Monthly Quantity was 10,600. Id. at A-20.

23. The amendment two Instructions for Completing Pricing Tables still advised for Evaluation Table C that offerors should "list the price per unit of each item from Table A," and that the monthly evaluated price would be "derived by multiplying the unit prices for each item by the quantities for each period." Appeal File, Exhibit 10 at A-5. As in the original RFP, the instructions for Table C still stated that "this table provides for the evaluation of recurring 'per active port' unit prices." Id. at A-4. The Unit Price Table A instructions stated that "the offeror shall provide pricing for Recurring Solution Costs at a rate per active port." Id. at A-3.

⁴ A SPIKE is an SSA employee whose primary duties are something other than answering incoming 800 calls, but who can potentially be assigned to answer calls during peak periods. Complaint ¶ 8; Answer ¶ 8.

24. In RFP amendment two, the SSA modified or added certain definitions of terms in Addendum D-1, "Glossary of Terms." The SSA changed the definitions as follows (the amendment two changes are underscored):

Active Port - A position encumbered on the contractor's solution that provides all necessary functionality, software, hardware, etc., associated with that position (e.g., a call representative is one active port and it encumbers a termination on the contractor's solution, all relative hardware, software, wiring, etc., yet it is still one active port). The same thing would hold true for a SPIKE station, it would encumber a termination on the contractor's solution, all its related hardware, software, wiring.

....

Call Center - Anyone [sic] of SSA's existing call answering centers. These sites are known to SSA as Teleservice Centers.

....

Center - Is a generic reference to a call center or call answering location.

....

Port - The interface between the contractor's solution and the Government's functionality. This may be an encumbered position on the contractor's switch or their network interface equipment.

....

Station - Is the generic term used to describe any equipment associated with the handling of telephone calls (e.g., agent station, supervisory station, technical assistant station, etc.).

Appeal File, Exhibit 10, Addendum D-1 at 1-2, 6-7.

Amendment Four of the RFP

25. By RFP amendment four, dated January 28, 2000, the SSA extended the closing date for receipt of offers to February 14, 2000. Appeal File, Exhibit 12. On the proposal due date, four offerors submitted proposals to the SSA. Respondent's Answer to Appellant's Interrogatory No. 1.

26. In MCI's initial proposal, dated February 14, 2000, MCI inserted the required unit prices for CLIN 1002, Recurring Monthly Unit Prices, on Unit Price Table A and Evaluation Pricing Table C. Appeal File, Exhibit 13, Pricing Tables A, C. MCI's unit prices for recurring services in Table A matched exactly with its unit prices in Table C for the

SSA's stated number of units (10,600). Id.; Appellant's Request for Admissions ¶ 22 (admitted).

27. The SSA's notes in the Appeal File Index described as "Contract Specialist's and Contracting Officer's Notes of MCI WorldCom's Oral Presentation (3/17/00)" contain the following text regarding MCI's initial price proposal:

CLIN 1002 - This price is based on 10,600 ports.

Appeal File, Exhibit 15, MCI Q&A at 3. Upon information and belief, these notes were written by the SSA's Mary Biddle.

28. Another offeror included a pricing assumption in its initial proposal applicable to CLIN 1002, "Recurring Monthly Unit Prices." This company's pricing assumption read as follows:

24. The Recurring Monthly Unit Prices (CLIN 1002 B) listed in Unit Price Table A (Section II - Pricing Tables) are based on the evaluation quantity of 10,600 stated in Evaluation Price Table C - Recurring Services. If this quantity varies, then the Recurring Monthly Unit Price (CLIN 1002 B) will change.

Appellant's Supplemental Appeal File, Exhibit A-2 at SSA2 0205.⁵

Amendment Five of the RFP

30. In RFP amendment five, issued on April 21, 2000, SSA changed the monthly quantity in Evaluation Pricing Table C, CLIN 1002, from 10,600 to 12,320. Appeal File, Exhibit 21 at A-23. With regard to Recurring Monthly Services, the SSA's instructions for completing the Pricing Tables remained unchanged. The Table C instructions still stated that "this table provides for the evaluation of recurring 'per active port' unit prices for the solution" Id. at A-4; Appellant's Request for Admissions ¶ 20 (admitted). The Table A instructions still stated that "the offeror shall provide pricing for Recurring Solution Costs at a rate per active port." Id. at A-3. The Unit of Measure for CLIN 1002 in Table A still said "port." Id. at A-11.

31. In RFP amendment five, Section B, entitled "Mandatory Specifications," SSA explained the modified configuration of the call answering solution:

The initial solution shall be configured to accept a minimum of 266 inbound FTS2001 T-1 circuits (or equivalent), into the contractor's service delivery

⁵ MCI has Bates-numbered the documents produced by the SSA in response to MCI's discovery requests. The designation "SSA2" means that the SSA produced the document in response to MCI Document Request No. 2. The designation "0205" is the page number within the Request No. 2 set.

points (SDPs). All 12,320 positions indicated in the PRIORITY LIST below, need to be supported by the contractor's solution. However, of these 12,320 positions, 11,124 are toll-free call answering positions that need to be connected, available, configured as non-blocking, and capable of successfully processing all toll-free calls from the contractor's SDPs to SSA's call centers. The remaining 1,196 positions are using PBX [private branch exchange] services only.

It is currently planned that the call centers will not staff more active call answering positions than [sic] its current inbound T-1 configuration (6,282 active positions). See CURRENT FTS2001 CIRCUITS chart below. For example, Albuquerque will not assign more than 415 call-answering positions to take inbound toll-free calls at any given time. Any of the 11,124 call answering positions that are idle shall be capable of logging onto the solution as one of the 6,282 active positions so long as they are within their site limitations (e.g., 415 call-answering positions for Albuquerque since they only have 415 circuits).

Appeal File, Exhibit 21 at B-4 to B-5.

32. According to an SSA Priority List contained in amendment five and later included in Section B of the contract, the following is an SSA breakdown of its proposed solution by call center comprising the SSA's 6282 circuits and the 12,320 call center stations or positions:

<u>Call Center</u>	<u>Circuits</u>	<u>Stations/Positions</u>
Albuquerque, NM	415	807
Auburn, WA	390	655
Baltimore, MD (2 locations)	648	1,924
Birmingham, AL	779	1,457
Boston, MA	64	78
Chicago, IL	490	1,104
Cincinnati, OH	20	65

Cleveland, OH	42	78
Des Moines, IA	20	34
Detroit, MI	60	97
East Brunswick, NJ	48	71
Fort Lauderdale, FL	92	179
Golden, CO	58	33
Grand Prairie, TX	45	93
Honolulu, HI	17	24
Houston, TX	72	136
Indianapolis, IN	22	30
Jamaica, NY	527	749
Jersey City, NJ	72	94
Kansas City, MO	561	1,108
Los Angeles, CA	120	190
Manassas, VA	45	67
Milwaukee, WI	41	63
<u>Call Centers</u>	<u>Circuits</u>	<u>Stations/Positions</u>
New Orleans, LA	8	38
Philadelphia, PA	482	817
Phoenix, AZ	48	74
Pittsburgh, PA	24	52
Portland, OR	40	58
Richmond, CA	474	791
Saddlebrook, NJ	36	57
St. Louis, MO	31	54
Salinas, CA	192	535
San Diego, CA	38	77
San Juan, PR	48	81

Tampa, FL	93	154
Twin Cities, MN	24	48
Wilkes Barre, PA	96	348
<u>TOTAL</u>	<u>6,282</u>	<u>12,320</u>

Appeal File, Exhibits 21 at B-5 to B-8, 52 at B-7 to B-8; Appellant's Request for Admissions ¶ 13 (admitted).

33. Under RFP amendment five, with a maximum of 6282 incoming calls and a total of 12,320 call answering positions, the SSA acquired the flexibility to staff the agency's call answering function in any way it desires at any time, within the port limitations of each call center. The combination of SSA call answering positions in use changes daily depending upon such factors as time zone, busy hours, and staff work schedules, including absenteeism. Complaint ¶ 13; Answer ¶ 13; Appellant's Request for Admissions ¶ 14 (admitted).

34. On May 18, 2000, MCI submitted a revised pricing proposal based upon the revised quantity that the SSA had provided in RFP amendment five. Appeal File, Exhibit 26. Once again, MCI's unit prices for recurring services in Table A matched exactly with its unit prices in Table C for the SSA's stated number of units (12,320). Id. at Tables A, C; Appellant's Request for Admissions ¶ 22 (admitted).

35. The other offeror which had included a pricing assumption in its initial proposal applicable to CLIN 1002 (see Uncontested Fact 28) also submitted a revised pricing proposal on May 17, 2000. Appellant's Supplemental Appeal File, Exhibit A-2. Once again, this offeror included a pricing assumption in its proposal for CLINs 1002 and 1003 that stated as follows:

24. The Recurring Monthly Unit Prices listed in Unit Price Table A (Section II - Pricing Tables) are based on the evaluation quantity of 12,320 stated in Evaluation Price Table C - Recurring Services. If this quantity varies, then the Recurring Monthly Unit Price will change.

Id. at SSA2 0143.

36. In the SSA's Record of Negotiations with this same offeror, dated June 14, 2000, representatives of the SSA and the offeror addressed the pricing assumptions that the offeror had included in its pricing proposal. Appellant's Supplemental Appeal File, Exhibit A-5, Record of Negotiations. With regard to the offeror's assumptions applicable to CLIN 1002, "Recurring Monthly Unit Prices," and CLIN 1003, "Circuit Monthly Prices," the SSA's Record of Negotiations states as follows:

24. States that the recurring monthly unit prices are based on the evaluation quantity of 12,320, but if this quantity should vary then the Recurring Monthly Unit Price will change. **SSA understands this, but felt that the**

comments were redundant and asked [the offeror] to remove them from its offer. [The offeror] concurred and agreed to remove the comments.

Id. at SSA5 0688.

37. In an SSA document entitled "[Offeror's] Negotiation Topics," prepared by the agency in advance of negotiations with this same offeror, the SSA commented upon each of the offeror's pricing assumptions. Appellant's Supplemental Appeal File, Exhibit A-5. With regard to the offeror's assumption for CLIN 1002, the SSA Negotiation Topics document states:

24. [Offeror] states that the recurring monthly unit prices are based on the evaluation quantity of 12,320, but if this quantity should vary then the Recurring Monthly Unit Price will change. **OKAY**

Id. at SSA5 0709.

Amendment Seven of the RFP

38. The SSA issued amendment seven to the RFP on July 7, 2000. Appeal File, Exhibit 37. With regard to CLIN 1002, Monthly Recurring Services, the instructions for completing Pricing Tables A and C remained unchanged. For Unit Price Table A, the instructions still stated that "the offeror shall provide pricing for Recurring Solution Costs as a rate per active port." Id. at A-3. For Evaluation Pricing Table C, the instructions still stated that "this table provides for the evaluation of recurring 'per active port' unit prices for the solution" Id. at A-5. On Pricing Table A, the Unit of Measure for CLIN 1002 still was "port." On Pricing Table C, the monthly quantity for the base year and each option year was 12,320. Id. at Tables A, C.

Amendment Eight of the RFP

39. The SSA issued amendment eight to the RFP on July 12, 2000. Appeal File, Exhibits 40, 41. This amendment extended the due date for offerors to provide revised proposals until the close of business on July 18, 2000. Id.

40. MCI submitted a revised price proposal on July 18, 2000. Appeal File, Exhibit 42. As it had done on all price proposals, MCI's unit prices for Monthly Recurring Services (CLIN 1002) in the Unit Price Table A matched exactly with its unit prices in Evaluation Pricing Table C for the stated number of units (12,320). Id., Tables A, C; Appellant's Request for Admissions ¶ 22 (admitted).

41. By letter dated July 21, 2000, the SSA's contracting officer invited each offeror to submit a final proposal revision not later than 3:00 p.m. on July 31, 2000. Appeal File, Exhibit 44.

42. On July 31, 2000, MCI submitted its final proposal revision. Appeal File, Exhibit 48. Once again, MCI's unit prices for Monthly Recurring Services (CLIN 1002) in Unit Price

Table A matched exactly with its unit prices in Evaluation Pricing Table C for the SSA's stated number of units (12,320). Id., Tables A, C.

43. The offeror which had agreed to remove its pricing assumption regarding CLIN 1002 (see Uncontested Facts 34-36) also submitted a final proposal revision on July 31, 2000. Appellant's Supplemental Appeal File, Exhibit A-2. On Unit Price Table A, the offeror inserted a "Note 1" that stated:

The 1002 B. Recurring Monthly Unit Prices are based on the port evaluation qty[.] stated in Table C. If this qty[.] varies, then the 1002 B. Recurring Monthly Unit Prices will change.

Id. at SSA2 0012. On Evaluation Pricing Table C, this offeror inserted exactly the same unit prices that it had included in Unit Price Table A. Id. at SSA2 0026.

44. MCI consistently followed a method of inserting the same unit prices in Table C of its proposal as it used in Table A. The unit prices appearing in both Tables A and C of MCI's Final Proposal Revision were as follows: Base Year - \$60.53; Option Year 1 - \$57.41; Option Year 2 - \$56.07; Option Year 3 - \$58.50; Option Year 4 - \$59.01; Option Year 5 - \$59.45; Option Year 6 - \$60.15. Appellant's Request for Admissions ¶ 24 (admitted).

45. [Disputed. This proposed uncontested fact concerns the manner by which MCI calculated its price for CLIN 1002.]

46. MCI employed the same method of calculating its Monthly Recurring Services (CLIN 1002) price in each of its earlier price proposals submitted in response to the RFP. Prior to RFP amendment five, MCI used 10,600 as the number of units, and after RFP amendment five, MCI used 12,320 as the number of units. Zeleniak Declaration ¶ 9.

47. The costs of providing the required monthly recurring services to the agency are tied to having 12,320 call answering stations available for the agency's use, not in processing a maximum of 6282 incoming calls at a given time. MCI's costs of providing recurring services to the SSA are in the following categories: [protected]. Zeleniak Declaration ¶ 10; MCI's Electronic Pricing Back-up File, Appellant's Supplemental Appeal File, Exhibit A-1, CLIN 1002 Items.

48. [This proposed uncontested fact, although not disputed, contains protected material. Since we do not deem it particularly relevant to our decision, we do not set it out here.]

Contract Provisions

49. The contract provides in Section B that the SSA may at any time add to the number of call answering stations available for the SSA's use. Appellant's Request for Admissions ¶ 34 (admitted).

50. The SSA accepted MCI's proposal for contract award and incorporated into the contract by reference MCI's July 31, 2000, Final Proposal Revision. Appeal File, Exhibit 52 at 2; Complaint ¶ 29 (admitted).

51. Paragraph C-8 of the contract includes a "Payment" clause. Appellant's Request for Admissions ¶ 25 (admitted).

52. The SSA did not indicate in the "Payment" clause that it intended to pay recurring monthly services only for the maximum number of calls that could be processed simultaneously. Appellant's Request for Admissions ¶ 26 (admitted).

53. Page C-4, subparagraph (g) of the contract includes an "Invoice" clause. Appellant's Request for Admissions ¶ 27 (admitted).

54. The "Invoice" clause states that the contractor's invoice should contain a "[d]escription, quantity, unit of measure, unit price and extended price of the item delivered." Appellant's Request for Admissions ¶ 28 (admitted).

55. The SSA did not indicate in the "Invoice" clause that it intended to pay recurring monthly services only for the maximum number of calls that could be processed simultaneously. Appellant's Request for Admissions ¶ 29 (admitted).

The Payment Dispute

56. [Disputed. This proposed uncontested fact concerns MCI's first invoice for recurring monthly services.]

57. On MCI's next invoice to the SSA, dated March 18, 2002, MCI billed SSA again for the number of call answering positions that were available to the agency, but the SSA again paid only for 6282 units. Thus, on an invoice for \$711,872.20, the SSA paid only \$380,249.46. Appeal File, Exhibits 58-59. The SSA's payment certification cites "Contract Mod #5" (a unilateral agency modification) as the basis for the SSA's position. *Id.*, Exhibit 53.

58. By letter dated June 11, 2002, from MCI's Susan Zeleniak to the SSA, MCI disputed the SSA's payment for only 6282 units and asserted that payment should be made for the number of call answering positions available to the agency. Appeal File, Exhibit 61.

59. During 2002 and 2003, the parties exchanged correspondence and position papers in an effort to resolve this pricing and payment dispute informally, but these efforts did not result in a resolution of the disagreement. Complaint ¶ 34 (admitted).

60. On April 8, 2003, following execution of the certification, MCI submitted a certified claim to the contracting officer pursuant to the Contract Disputes Act, 41 U.S.C. §§ 601-613 (2000). Appeal File, Exhibit 79; Complaint ¶ 35 (admitted).

61. On June 6, 2003, the contracting officer issued a final decision denying MCI's claim in its entirety. Appeal File, Exhibit 80; Complaint ¶ 36 (admitted).

62. MCI filed a timely appeal from the contracting officer's final decision on June 18, 2003.

Discussion

It is well established that resolving a dispute on a motion for summary relief is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Giesler v. United States, 232 F.3d 864, 869 (Fed. Cir. 2000); Olympus Corp. v. United States, 98 F.3d 1314, 1316 (Fed. Cir. 1996); Dairyland Power Cooperative v. United States, 16 F.3d 1197, 1202 (Fed. Cir. 1994); Copeland Enterprises, Inc. v. CNV, Inc., 945 F.2d 1563, 1565-66 (Fed. Cir. 1991); Mingus Constructors, Inc. v. United States, 812 F.2d 1387, 1390 (Fed. Cir. 1987); Armco, Inc. v. Cyclops Corp., 791 F.2d 147, 149 (Fed. Cir. 1986).

The instant case appears to be particularly well suited to resolution by summary judgment. The key issue is whether the 12,320 positions called for in the contract should be considered active ports for the purpose of recurring monthly billing. To resolve this issue, we must, of course, look first to the contract itself to see if it can be interpreted in such a way as to resolve the current dispute. Cases featuring contract interpretation are particularly amenable to resolution by summary judgment. Government Systems Advisors, Inc. v. United States, 847 F.2d 811 (Fed. Cir. 1988).

On the issue presented to us here, we find no ambiguity in the contract terms themselves -- particularly when the relevant provisions are read in the light of the contract's mandatory requirements. Furthermore, we find that the uncontested facts listed by appellant and undisputed by the Government regarding the RFP and negotiations leading to award confirm our interpretation of the contract as written.

The Contract's Terms

The contract's section B, Mandatory Specifications, offers a clear idea of precisely what MCI was expected to provide to the SSA under the contract. There we read in the introduction to this section the following:

This specification is for a network-based services solution to replace the Social Security Administration's (SSA) existing premise-based Automatic Call Distributors (ACDs). Network-based services solution means that the solution cannot contain any Government housed ACDs or PBXs. Network-based services solution as defined by the Government means that the contractor shall receive incoming toll-free calls from the FTS [Federal Telecommunications Service] 2001 switch[ed] voice network at the contractor's service delivery point (SDP). The contractor shall provide answer supervision at their SDP. The contractor will then provide all equipment/services from their SDP to the ear piece at the SSA's call answering locations. The contractor can either use their own call delivery medium for calls from the contractor's SDP to the call answering locations, or use FTS 2001 dedicated access. All switching equipment will be housed off of Government premises with the exception of

solution interface equipment (e.g., circuit termination equipment, wiring blocks, service extension equipment, etc.). All contractor provided premise-based ancillary equipment (e.g., solution interface equipment, station wiring, station related equipment, PCs [personal computers], VDTs [video display terminals], etc.), shall meet all electrical and building code standards for each call center location.

Appeal File, Exhibit 52 at B-2.

In the same section B, under B-1, General Requirements, we read:

We currently have over ten thousand (10,000) employees working in some capacity to answer incoming toll-free calls at our call centers. All of these employees will need to be supported by this solution in some manner. These numbers may increase by as much as 10% per year as duties are redefined. The contractor shall support all optional increases of services. Approximately five thousand (5,000) of these positions are Call Representatives whose primary responsibility is to answer incoming calls. The remaining five thousand (5,000) positions are employees known as SPIKES (whose actual duties are other positions, but who answer calls part of the time). The solution shall be capable of supporting all these employees with features that meet our specifications. The solution shall look at all calls in an enterprise-wide fashion and be capable of unlimited call transfers or overflow between different call centers with minimal effort on the Agency's part.

Appeal File, Exhibit 52 at B-4.

This section of the contract also contains significant language added to the RFP in amendment five. We have already encountered this language in Uncontested Fact 31. For the reader's convenience, we repeat it here:

The initial solution shall be configured to accept a minimum of 266 inbound FTS2001 T-1 circuits (or equivalent), into the contractor's service delivery points (SDPs). All 12,320 positions indicated in the PRIORITY LIST below, need to be supported by the contractor's solution. However, of these 12,320 positions, 11,124 are toll-free call answering positions that need to be connected, available, configured as non-blocking, and capable of successfully processing all toll-free calls from the contractor's SDPs to SSA's call centers. The remaining 1,196 positions are using PBX services only.

It is currently planned that the call centers will not staff more active call answering positions than [sic] its current inbound T-1 configuration (6,282 active positions.). See CURRENT FTS2001 CIRCUITS chart below. For example, Albuquerque will not assign more than 415 call-answering positions to take inbound toll-free calls at any given time. Any of the 11,124 call answering positions that are idle shall be capable of logging onto the solution as one of the 6,282 active positions so long as they are within their site

limitations (e.g., 415 call-answering positions for Albuquerque since they only have 415 circuits).

Appeal File, Exhibit 52 at B-4 to B-5. The priority list referred to in the quote above from section B of the contract is set out in the same section and identifies by call center the total 12,320 positions, *all* of which are to be supported by the contractor's solution. Id. at B-7 to B-8; see also Uncontested Facts 31-32.

Leaving the mandatory specifications for a moment, we turn next to the contract's Unit Price Table A and, in particular, to CLIN 1002, Recurring Monthly Unit Price. The unit of measure for CLIN 1002 is "port." No quantity is stated. Appeal File, Exhibit 52, Table A. We understand this to mean that the contract envisions MCI billing SSA monthly on a per port basis. To determine what a port is, however, we turn to the glossary of terms contained in Addendum D-1 of the contract. There we find the following definition of "port":

The interface between the contractor's solution and the Government's functionality. This may be an encumbered position on the contractor's switch or their network interface equipment.

Id., Addendum D-1 at 6. This generic definition of "port," in and of itself, is of little value to us in determining with precision what is intended by the term "port" as the unit of measure for CLIN 1002. Another definition in the glossary, however, is considerably more helpful -- namely, the definition of "active port." It reads:

A position encumbered on the contractor's solution that provides all necessary functionality, software, hardware, etc. associated with that position, (e.g., a call representative is one active port and it encumbers a termination on the contractor's solution, all related hardware, software, wiring, etc., yet it is still one active port). The same thing would hold true for a SPIKE station, it would encumber a termination on the contractor's solution, all its related hardware, software, wiring.

Id., Addendum D-1 at 1.

Read in the light of the contract's mandatory specifications quoted above, we consider it obvious that, as thus defined, an active port equates to a call answering station -- whether this be the station of one of the call representatives who constitute approximately half of the agency's workforce and whose primary responsibility is to answer incoming calls or the station of one of the remaining employees or SPIKES, whose actual duties differ from the call representatives, but who answer calls part of the time. Thus, each of the individual 12,320 positions or stations identified in the priority list contained in section B and which, under the contract, must all be supported by the contractor's solution, is properly to be considered an active port.

The contract does of course state that, under current plans, a call center will not staff at any given time more active call answering positions than its current inbound T-1 configuration permits. So long as this situation continues, therefore, not all of the call stations or positions provided by the contractor to SSA employees will be operative at the

same time. Nevertheless, notwithstanding these current restraints, which may or may not be permanent, the contractor is still required to provide the full complement of stations allocated to each of the agency's call centers and *each and every one* of these stations must be supported by the contractor's solution and capable of logging onto that solution and becoming operative at any time within the limits of the current circuit restraints. This is true with regard to the total 12,320 stations throughout the system. In this sense, we are convinced that all 12,320 stations called for under the contract are active ports and that any limitation on the use of any one of them, owing to the restrictive availability of circuits, does not render that port any less "active," as that term is used in the contract.

The SSA now states that the contract calls only for a number of ports equal to the number of circuits provisioned, namely, 6282. Respondent's Response to Appellant's Motion for Summary Relief at 2, 6. We find this position unsupported by the contract as written. As stated, the contract requires MCI to provide 12,320, not 6282, positions, capable of logging onto the proposed solution. That solution must support all 12,320 positions and provide all SSA employees with features that meet the contract specifications. The solution must look at all calls in an enterprise-wide fashion and be capable of unlimited call transfers or overflow between different call centers with minimal effort on the agency's part. In short, although no more than 6282 of these positions may be operative at any one time, *all* of them must be available for use at *any* time within the limits of the inbound T-1 configuration of the agency's call centers.

The 12,320 call stations or positions called for under the contract, therefore, are the ports to which the per port unit prices under CLIN 1002 apply and which should serve as the basis for the recurring monthly compensation of MCI under the contract. The limitation in circuits currently available at the agency's various call centers does not change the number of positions or ports required. It merely imposes a constraint on the number of positions which can be in use at one single time.

A contract must be read in accordance with its express terms and the plain meaning thereof. C. Sanchez and Son, Inc. v. United States, 6 F.3d 1539, 1543 (Fed. Cir. 1993); Hills Materials Co. v. Rice, 982 F.2d 514, 516 (Fed. Cir. 1992); Hol-Gar Manufacturing Corp. v. United States, 351 F.2d 972, 976 (Ct. Cl. 1965); Contract Automotive Repair and Management v. General Services Administration, GSBCA 12773, et al., 99-2 BCA ¶ 30,530, aff'd 243 F.3d 563 (Fed. Cir. 2002) (table). The contract must also be read in a manner that gives meaning to all of its provisions and makes sense. McAbee Construction, Inc. v. United States, 97 F.3d 1431, 1435 (Fed. Cir. 1996); Hughes Communications Galaxy, Inc. v. United States, 998 F.2d 953, 958 (Fed. Cir. 1992). So far as the instant dispute is concerned, we believe that our interpretation of the relevant contract terms is in accordance with these principles of interpretation. We have attempted to follow the plain meaning of the contract definitions for "active port" and "port." We read the former as a specific definition enveloped within the ambit of the latter definition, which is of a more general nature. Based upon these definitions, we conclude that all 12,320 of the positions identified in the PRIORITY LIST contained in section B of the contract are active ports. Finally, we find nothing in the contract's payment clause or invoice clause which suggests that compensation of MCI under CLIN 1002 for use of these ports was not intended or contemplated. See Appeal File, Exhibit 52 at C-4, C-9.

The RFP and Negotiations Leading to Award

Although we see no need to step beyond the four corners of the contract to resolve this dispute, nevertheless, we note the presence of an impressive body of undisputed facts regarding the RFP and negotiations leading to contract award which readily confirms our interpretation of the contract.

From the time the RFP was released to the public, the agency appears to have acted on the assumption that all call positions called for under the RFP and any resulting contract would be active ports. The instructions for Unit Price Table A stated that the pricing should be "at a flat rate per active port." Uncontested Fact 13. Further, the instructions for Evaluation Pricing Table C, Recurring Services, stated that this table provided for the evaluation of recurring "per active port unit prices." Uncontested Fact 15. The quantity used in Evaluation Pricing Table C for determining recurring monthly unit prices was the quantity of positions called for in the mandatory specification (originally 10,600, later increased to 12,320 by amendment five). Uncontested Fact 16.

Initially, vendors were uncertain as to the distinction, if any, between "port" and "station." Uncontested Facts 18-19, 21. In response to their queries, SSA explained that "[p]ort is equal to any station equipment and/or software" and that "there is a 1:1 ratio between ports and positions/stations." Uncontested Fact 21. Consequently, in amendment two of the RFP, the definition of "port" was expanded to include the statement: "This may be an encumbered position on the contractor's switch or their network interface equipment." The definition of "active port" was also amended to confirm that not only a call representative station but also a SPIKE station should be considered to be an active port. Uncontested Facts 12, 14, 24.

In its initial proposal, the per port unit price MCI entered on Unit Price Table A for CLIN 1002, Recurring Monthly Unit Price, was based on the original RFP requirement for 10,600 positions. Agency officials recognized this fact when they noted that the price for CLIN 1002 was "based on 10,600 ports." Uncontested Fact 27. Another vendor, like MCI, likewise quoted a per port unit price for CLIN 1002 based upon the quantity of 10,600 ports. Uncontested Fact 28.⁶ Interestingly enough, the agency, in commenting on the same vendor's quote for this CLIN in a revised proposal, deemed it "redundant" for the vendor to state yet again that the per port unit price quoted for recurring monthly costs was subject to revision if the required number of units were to change. Uncontested Facts 35-36.

SSA bases its current position on changes introduced into the RFP by amendment five. The original RFP had required that the vendor's solution be capable of successfully processing without blockage 10,000 simultaneous calls enterprise-wide. Uncontested Fact

⁶ To avoid any confusion on this point, we note in passing that this vendor's reference to CLIN 1002 B, as quoted in Uncontested Fact 28, is, in fact, a reference to CLIN 1002. There is no CLIN 1002 A. Rather, the RFP, in identifying CLIN 1001, Initial Start-Up Unit Prices, and CLIN 1002, Recurring Monthly Unit Prices, also distinguishes the one CLIN from the other by the use of the letters "A" and "B." Appeal File, Exhibit 1, Unit Price Table A.

17. Amendment five decreased that number to 6282, owing to limitations in current circuit availability at various call centers. Uncontested Fact 31. At the same time, amendment five increased the number of call answering positions from 10,600 to 12,320. Uncontested Facts 30-31.

What we find particularly telling about this reduction in the number of simultaneous incoming calls which a proposed solution would be expected to handle is the absence in amendment five of any corresponding changes in the instructions provided to offerors for the preparation of Pricing Tables A and C. Table A's instructions still stated that the "offeror shall provide pricing for Recurring Solution Costs at a rate per *active* port" (emphasis added). Instructions for Evaluation Pricing Table C, Recurring Services, still stated that the table was to "provide for the evaluation of recurring 'per *active* port' unit prices for the solution . . ." (emphasis added), but the number of active ports used to determine the evaluated price of the recurring monthly costs was the number of total call stations required (now increased from 10,600 to 12,320). Uncontested Fact 30. The conclusion we draw from the absence of any changes in these instructions provided in amendment five for preparing Tables A and C is that the agency still considered all of the call answering positions required by the RFP to be active ports, notwithstanding the fact that the limitation in circuit availability would render it impossible for a proposed solution to handle more than 6282 incoming calls at any one time.

We recognize that Evaluation Pricing Table C, Recurring Services, was included in the RFP for evaluation purposes and does not appear in the contract. Nevertheless, the agency's assumption, even solely for evaluation purposes, that the required positions were active ports is especially significant. We find it even more significant that this assumption remained unchanged even after the number of required stations was increased by amendment five from 10,600 to 12,320.

Our conclusion that the agency continued to consider all required positions to be active ports even after the issuance of amendment five is reinforced by the fact that in all revised proposals submitted by MCI following amendment five, MCI again offered unit prices for recurring services in Table A which matched exactly the unit prices in Table C for the stated number of 12,320 units. Uncontested Facts 34, 40, 42, 44, 46. When MCI used this same approach in its initial proposal, the agency concluded that the unit prices offered on Table A for CLIN 1002 were based upon the total number of required ports. Uncontested Facts 26-27. Presumably, if the agency's understanding of the number of required active ports had changed with amendment five, as is now alleged, one would have expected the agency to seek some verification of what would have been an apparent error on the part of MCI. Yet, it is appellant's contention, unchallenged by SSA, that SSA never questioned or objected to the method used to calculate its unit prices for CLIN 1002. Appellant's Memorandum in Support of Its Motion for Summary Relief at 16.

One of appellant's uncontested facts convinces us that the agency saw no need to seek such verification of MCI's revised quotes for CLIN 1002 simply because the agency's understanding of the number of required active ports had not changed with the issuance of amendment five. As mentioned earlier, another vendor, in offering a per port unit price for CLIN 1002, Recurring Monthly Prices, had expressly stated that this price was based on the quantity of required units stated in the Evaluation Price Table C. When the assumption was

repeated in a revised proposal submitted after amendment five, the agency commented that it was "redundant" for the vendor to state yet again that the per port unit price quoted for recurring monthly costs was subject to revision if the required number of units were to change. Uncontested Facts 35-37. We attach no little significance to the fact that this agency comment was made with regard to the revised proposal submitted by the vendor *after* issuance of amendment five.

SSA's Current Position

Notwithstanding its position prior to contract award regarding the nature of an active port, the Government now states:

SSA's position is that the number of ports equates to the number of circuits provisioned, which also equals the number of stations that may be logged in at one time, 6,282. SSA's interpretation is based upon its statements that it intended to pay on the basis of active or encumbered positions, and not on the basis of idle positions.

Respondent's Response to Appellant's Motion for Summary Relief at 2.

We can find no basis in the contract for this more restrictive interpretation of the term "active port." The contract states that a call representative is an active port which "encumbers a termination on the contractor's solution." The same is said to hold true for a SPIKE station which encumbers a termination on the contractor's solution together with all related hardware, software, and wiring. No mention is made in the contract definition of active port, however, that the port must also be capable of simultaneous use with all other such ports before it can be considered active.

In his final decision, the contracting officer, allegedly relying on the definition of "port" provided in the contract, states that the number of ports equals the number of "interfaces or connections between the contractor's solution and the Government's employees that answer calls (i.e., the Government's functionality)." He contends that "SSA staffs or encumbers up to 6,282 positions at any one time." Appeal File, Exhibit 80 at 3 (unnumbered). The Government cannot rely on this broad, general definition of "port" without referring to the contract's definition of "active port" as well. The interface and encumbered positions spoken of in the general definition of "port" have been further specified in the contract's definition of "active port." The call representative and SPIKE stations are said to constitute ports -- active ports. It is here, therefore, and not simply at the contractor's switch, that the required interface and encumbered position characteristic of a port can be found.

SSA now argues that MCI's position violates a well-accepted canon of contract interpretation which requires that individual words be given their plain meaning. In this regard, the Government contends that MCI is simply ignoring the import of the term "active" when used to modify the term "port." Respondent's Response To Appellant's Motion For Summary Relief at 3. We find this argument unpersuasive. In reading the contract, we have attempted to read the definitions of "port" and "active port" in such a manner as to harmonize the one with the other. As we have already noted, we read the definition of "port" to be

general in nature while that of "active port" to be more specific. As a result of the refinements and explanations given to both terms in amendment two of the RFP, the Government left little difference between them. See Uncontested Facts 21-24. Under the RFP, as amended, the ports required for a vendor's proposed solution are all or virtually all "active ports."

Apart from our objections already stated to the SSA's current interpretation of the contract, we have difficulties with the inherent reasonableness of the Government's interpretation. As stated earlier, a contract interpretation should not only give meaning to all its provisions but also make good sense. Upon close scrutiny, the Government's interpretation leads to a result which is hardly consistent with the contract's overall purpose. Under the contract, MCI is required to maintain in fit operating condition a network-based solution to distribute the toll-free calls SSA receives throughout the entire SSA system, and the costs of providing the required monthly recurring services of this solution are tied to having 12,320 call answering stations available for the agency's use. In addition, MCI is required to increase the number of stations as required. Uncontested Facts 47, 49; Appeal File, Exhibit 52, Section B. Under SSA's interpretation of the contract, however, the recurring monthly prices to which MCI is said to be entitled will not serve to defray any costs incurred by the contractor to maintain in fit operating condition the remaining existing positions or any future positions over and above the 6282 for which SSA is willing to pay. This hardly fits the basic contract scheme underlying the original procurement as a whole.

MCI's Claim for Prompt Payment Act Interest

In its certified claim of April 4, 2003, MCI demanded interest on the disputed amount under both the Prompt Payment Act (PPA) and the Contract Disputes Act. The claimant contends that the PPA interest is measured from the date that payment should have been made after receipt of a proper invoice. Appeal File, Exhibit 79 at 8. It is of course true that, under the PPA, a contractor is entitled to interest if payment is not made by the required payment date after the Government's receipt of a proper invoice. 31 U.S.C. § 3902 (2000). The Act, however, also provides that interest penalties are not required when payment is not made because of a dispute over the amount of payment or compliance with the contract. Id. § 3907(c).

In its proposed Uncontested Fact 56, MCI states:

MCI submitted its first invoice to the SSA for recurring monthly services on February 19, 2002. Appeal File, Exhibit 56; Complaint ¶ 32 (admitted). MCI billed SSA for the number of call answering positions that were available to the agency, but the SSA paid MCI only for the number of calls that could be processed simultaneously, 6282 units.

Uncontested Fact 56 is one of the two proposed uncontested facts which the Government disputes. Government counsel's comment regarding this fact reads, in part, as follows:

Specifically SSA disputes that it paid [MCI] Worldcom for the number of calls that could be processed simultaneously. Instead, SSA asserts that it paid

Worldcom for the number of ports in its solution, which equals the number of calls that can be processed simultaneously.

Respondent's Response to Appellant's Motion For Summary Relief at 6.

The disagreement between the parties regarding Uncontested Fact 56, therefore, goes only to the alleged reason for the SSA's partial payment of MCI's first invoice for recurring monthly services. We find no evidence of disagreement over whether the partial payment was timely. The Government's refusal to pay the entire amount requested, once payment was due, however, is sure evidence of a dispute regarding payment of the invoice previously submitted. Based on this fact alone, therefore, we conclude that, as a matter of law, any claim for PPA interest on the disputed amount from the date of partial payment to the date on which the contracting officer received MCI's certified claim of April 4, 2003, must be denied.

Decision

The appeal is **GRANTED IN PART**. MCI's motion for summary relief is granted in its entirety except for appellant's claim for PPA interest. On that claim for interest, the Board, sua sponte, grants summary relief in favor of SSA. The call answering positions installed by MCI and accepted by the Government as part of the network solution called for under the contract are active ports for which the contractor is entitled to payment at the applicable per port unit price for contract line item 1002. The amounts withheld to date by the Government should be paid forthwith to MCI with interest, in accordance with the Contract Disputes Act, 41 U.S.C. § 611, from the date the contracting officer received MCI's certified claim of April 4, 2003.

EDWIN B. NEILL
Board Judge

We concur:

ROBERT W. PARKER
Board Judge

CATHERINE B. HYATT
Board Judge