

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

DENIED: September 26, 2006

GSBCA 16233

AMEC CONSTRUCTION MANAGEMENT, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Barbara G. Werther and Ronan J. McHugh of Thelen Reid & Priest LLP, Washington, DC, counsel for Appellant.

Dalton F. Phillips and Catherine C. Crow, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **BORWICK**, and **PARKER**.

DANIELS, Board Judge.

“General conditions costs” are expenses for project managers, supervisors, and clerical assistants; temporary offices and utilities and supplies for those offices; and other miscellaneous expenses necessary for on-site management of a construction project. *AMEC Construction Management, Inc. v. General Services Administration*, GSBCA 16233, 06-1 BCA ¶ 33,141, at 164,247 (2005), *reconsideration denied*, 06-1 BCA ¶ 33,177, at 164,384. AMEC Construction Management, Inc. (AMEC) contends that it incurred \$1,582,769 in these costs in performing a construction contract with the General Services Administration

(GSA) between March 2 and July 20, 2001. AMEC claims that it is entitled to have GSA pay for the costs.

The parties earlier asked the Board to resolve the dispute regarding this claim by granting one or the other of cross-motions for summary relief. We declined to do so, concluding that GSA's position was wrong as a matter of law and that AMEC's was incomplete and confusing. 06-1 BCA ¶ 33,141, *reconsideration denied*, 06-1 BCA ¶ 33,177.

Since then, many trees have been felled to produce enough paper to print the results of the parties' efforts to explain the case to us: a transcript of a four-day hearing and very lengthy briefs. Now that we have had a full opportunity to understand the case, we are especially regretful that the trees were not allowed to live. The resolution of the dispute is quite simple: AMEC's claim is based on a fundamental misunderstanding of the contract. When GSA added "tenant fit-out" (TFO) work to the third and final portion of the contract, it did not extend the length of the contract, so no general conditions costs for additional duration had to be incurred as a consequence of the agency's action. Nor has AMEC demonstrated that any additional general conditions costs had to be incurred specifically to supervise the TFO work. The claim is denied.

Findings of Fact

On November 8, 1996, GSA awarded to AMEC¹ a contract for the renovation of the Interstate Commerce Commission (ICC), United States Customs Service (USCS), and Connecting Wing (CW) Buildings in Washington, D.C. Appellant's Proposed Stipulations ¶ 1; Respondent's Proposed Stipulations ¶ 2.² At the conclusion of the project, the Environmental Protection Agency became the tenant in the buildings. Appellant's Proposed Stipulations ¶ 3.

The contract consisted of three "construction contracts" (CCs). CC #1 involved the central utility plant for all three buildings, CC #2 involved the ICC Building, and CC #3

¹ The contract was actually awarded to Morse Diesel International. AMEC is the successor in interest to Morse Diesel International as a consequence of a name change which occurred in 2000 and to which GSA assented for purposes of this contract. AMEC and Morse Diesel International are the same entity. Appellant's Proposed Stipulation ¶ 1 n.1. When referring to the contractor in this opinion, we use the term "AMEC."

² Each party proposed stipulations and objected to some of the other party's proposed stipulations. We cite only to proposed stipulations to which no objection was raised.

involved the USCS and CW Buildings. The contract as awarded was for CC #1 and permitted GSA to exercise options for CC #2 and CC #3. GSA exercised the option for CC #2 at the inception of the contract. It could exercise the option for CC #3 at any time between January and May of 1998. Appellant's Proposed Stipulations ¶¶ 4, 9; Respondent's Proposed Stipulations ¶¶ 2, 3.

This case involves CC #3. In section 00800, the contract envisioned the following schedule for this portion of the work:

9. Complete 881 calendar days after exercising CC#3 all vertically communicating mechanical, electrical, telecommunications facilities, fire and life safety systems, and attic level for CC#3 Base Building. The target for exercising CC#3 is January 98 to May 98, ***with the building available for construction within one calendar day of exercising the option.*** All work associated with CC#1 shall be completed prior to Government[']s acceptance of substantial completion [of] all areas stated below. All work associated with schedule item No. 9 must be completed prior to Government[']s acceptance of substantial completion for Areas G-L. Final completion of CC#3 will be phased with tenant fit-out areas as stated below:

10. ***The target for issuing tenant fit-out construction documents for CC#3 is 405 days after exercising Option No. 2. The target for authorization to proceed with the tenant fit-out work is 467 days after exercising Option No. 2.*** Complete within 414 calendar days after issuance of a modification for tenant ***fit-out and authorization to proceed with the work:*** Area G tenant ***fit-out*** and CC#3 of the Base Building's portion of Area G.

11. Complete within 444 calendar days after issuance of a modification for tenant ***fit-out and authorization to proceed with the work:*** Area H tenant ***fit-out*** and CC#3 of the Base Building's portion of Area H.

12. Complete within 476 calendar days after issuance of a modification for tenant ***fit-out and authorization to proceed with the work:*** Area I tenant ***fit-out*** and CC#3 of the Base Building's portion of Area I.

13. Complete within 506 calendar days after issuance of a modification for tenant ***fit-out and authorization to proceed with the work:*** Area J tenant ***fit-out*** and CC#3 of the Base Building's portion of Area J.

14. Complete within 539 calendar days after issuance of a modification for tenant *fit-out and authorization to proceed with the work*: Area K tenant *fit-out* and CC#3 of the Base Building's portion of Area K.
15. Complete within 570 calendar days after issuance of a modification for tenant *fit-out and authorization to proceed with the work*: Area L tenant *fit-out* and CC#3 of the Base Building's portion of Area L.

Appellant's Supplemental Appeal File (ASAF), Exhibit 210 (bolding in original); *see* Transcript at 167-68.

This provision contains three terms which require definition – “base building,” “tenant fit-out,” and “Area.” “Base building” work included completely finished open plan office space on virtually every floor. “Tenant fit-out” work involved refinements to some of the open plan office space – installation of some demising partitions and creation of reception areas and private offices for senior personnel. It also involved the supply and installation of some paint, carpets, and lights different from those in the base building work. Transcript at 400, 425-26, 824. Base building work was included in AMEC's original price for CC #3 work. TFO work was not; rather, the contract included unit prices which could be applied to that work if and when it was ordered. Appeal File (GSBCA 16151),³ Exhibit 5 at 3-4; ASAF, Exhibit 3; Transcript at 36, 775.

The Areas, as mentioned in section 00800, were defined portions of the buildings in question. Area G was the GSA building management space in the basement of the USCS Building (essentially the entire north side of that basement); GSA building management offices on the northeast side of the first floor of that building; and the seventh floor of the USCS and CW Buildings. Area H was the entire sixth floor of the two buildings. Area I was the fifth floor of the two buildings. Area J was the third and fourth floors of the buildings, including the Mellon Auditorium balcony and the library. Area K was the first floor of the USCS Building, with the exception of the portion included in Area G; the second floor of that building; and the Mellon Auditorium, except for its balcony. Area L was the basement of the USCS and CW Buildings, with the exception of the portion included in Area G; and any other parts of the project not designated as being in another area, including the exterior. The cafeteria and the garage were included in the basement portion of Area L. Transcript

³ AMEC filed a large number of claims on this contract and appealed many of the contracting officer decisions on those claims. The appeals were docketed under various GSBCA numbers. The parties agreed to include in the record for this case some of the appeal file exhibits from other cases, including GSBCA 16151.

at 398-405, 408-09. GSA provided for completion of the work by areas of the buildings because the tenant planned to move into the very large space one portion at a time. *Id.* at 398.

GSA did not receive the funding necessary to exercise the option for CC #3 within the contract's time frame of January to May of 1998. Appellant's Proposed Stipulations ¶ 9. In September 1997, the agency's project manager, Sam Jabbour, asked AMEC to agree to extend the date for exercise of the option until December 31, 1999. Transcript at 44-45; ASAF, Exhibits 6-7.

On March 6, 1998, Mr. Jabbour's successor as project manager, Eric Albrecht, asked AMEC to "pric[e] the credits and escalated costs associated with Phase CC#3 adjustments as outlined in the enclosed drawings and narrative dated March 2, 1998, assuming an N.T.P. [notice to proceed] date of January 1, 1999." ASAF, Exhibit 20. As understood by AMEC's project manager, Mark McGaughan, Mr. Albrecht's instruction involved only base building work; it did not involve TFO work. Transcript at 50, 58.

On March 18, Mr. Albrecht slightly revised his request and made it much more detailed. He requested pricing for what had been designated CE (construction engineer's proposal – Transcript at 726) 66 on the basis that GSA would issue a notice to proceed with CC #3 work on January 4, 1999. He also said that GSA would deliver TFO drawings to AMEC on February 7, 1999, and expected a proposal from the contractor for that work on March 7, 1999. In addition, he provided a schedule for CC #3 work which was similar to the original schedule, but with a later beginning and a more compressed period for performance of the first portion of the work:

3. Complete by October 20, 2000 CC#3 all vertically communicating mechanical, electrical, telecommunications facilities, fire and life safety systems, and attic level for CC#3 base building. All work associated with this item must be completed prior to government acceptance of substantial completion for areas G-L. Final completion of CC#3 will be phased with tenant fit out areas as stated below.

4. The tenant fit out areas for the USCS Building are to be completed on the following dates:

Area G – Completed on October 20, 2000

Area H – Completed on November 17, 2000

Area I – Completed on December 15, 2000

Area J – Completed on January 26, 2001

Area K – Completed on February 23, 2001

Area L – Completed on March 23, 2001

ASAF, Exhibit 23.

Mr. Albrecht's March 18 letter directed AMEC to include in its proposal allowances of unspecified amounts for TFO work "for the following trades" of electrical, mechanical, drywall, and "Morse Diesel" (the last meaning AMEC). He explained that the actual cost of TFO work "cannot be estimated at this time due to the fact the drawings will not be issued until February 2, 1999." After the drawings were issued, he said, "the intent is to convert the allowances to an itemized proposal based on the . . . drawings Cost over and above the allowances will entitle the contractor to time adjustment, if necessary." ASAF, Exhibit 23; Transcript at 264-65.

The following month, on April 28, Mr. Albrecht refined his request still further. He told AMEC to "[u]se the following allowances in your CE#66 cost proposal for USCS and Connecting Wing Floors Basement through seven tenant fit out for the following trades: . . .

Electrical = \$2,200,000

Mechanical = \$900,000

Drywall/Acoustical = \$1,000,000

Morse Diesel [AMEC] for the remaining trades = \$1,800,000.

The allowances were not to include the general contractor's markup for commission. ASAF, Exhibit 29 at 2-3. In testimony before the Board, Mr. Albrecht said that the phrase "the remaining trades" means "exactly what it states. Any other trades, other than electrical, mechanical, drywall/acoustical." Transcript at 265-66. AMEC's Mr. McGaughan thought that the phrase included general conditions costs. *Id.* at 76. The two did not discuss the meaning of the phrase, however. *Id.*

On May 4, 1998, AMEC submitted to GSA its first proposal in response to CE 66. The proposal was for \$61,922,815 – a repricing of all CC #3 work, including \$5,900,000 in

allowances for TFO work. The proposal includes general conditions costs for the period of time between a start date of January 4, 1999, and a completion date of October 22, 2000. ASAF, Exhibit 31; Transcript at 77-81, 303, 767.

On May 26, the parties agreed to contract modification PC 29, whereby GSA was authorized to exercise its option for CC #3 as late as January 4, 1999. According to this modification, "Limited notice to proceed will be issued January 4, 1999, with full notice to proceed to be issued by May 31, 1999." PC 29 was issued with an understanding that it would be followed by a bilateral adjustment to the contract price, compensating AMEC for the impact of the late exercise of the option. Respondent's Supplemental Appeal File (RSAF), Exhibit 10.

The format AMEC had used in its proposal – repricing all the CC #3 work – was not what GSA intended. The agency wanted instead to issue a contract modification for the impact of the later start and compressed schedule, relative to what was originally envisioned, and the changes in scope which had been made. Transcript at 84-89, 313-14. In response to GSA's request, AMEC submitted on June 22, and in revised form on July 28, a best and final offer in what it called "delta format." This proposal was priced at \$9.9 million – \$4 million for the impacts and changes and \$5.9 million in allowances for the TFO work. ASAF, Exhibits 39, 43; RSAF, Exhibits 18, 19; Transcript at 93-96, 290.

On August 31, the parties agreed to contract modification PS 39. In this modification, GSA agreed to pay AMEC \$9.9 million in furtherance of the arrangement initiated in PC 29, subject to availability of funds. Consistent with AMEC's July proposal and GSA's April letter, \$5.9 million of this amount was for TFO allowances. PS 39 recited the same allocation of allowances as was specified in the agency's April letter – "Electrical \$2,200,000; Mechanical \$900,000; Drywall/Acoustical \$1,000,000; [AMEC] for remaining trades \$1,800,000. Cost over and above these allowances will entitle the contractor to time adjustment, if necessary." (The actual scope and price of the TFO work remained to be determined.) PS 39 included the sentence, "Settlement of this change includes all cost, direct, indirect, impact and delay, associated with this change order." RSAF, Exhibit 20.

PS 39 also addressed the schedule for CC #3 work. It said that GSA would exercise the option for CC #3 by January 4, 1999, and issue a limited notice to proceed by that date. The agency would "issue, with a Request for Proposal, the Tenant fit out drawings by April 7, 1999. The Full Notice to Proceed will be issued by the GSA anytime between January 4, 1999 up to and including May 30, 1999. The duration of contract, based on a floating NTP [notice to proceed], is defined per the attached schedule." This schedule was consistent with the one contained in the agency's March 18 letter. It shows that AMEC would be required to complete "CC #3 vertically communicating work & attic" 655 days

after issuance of the full NTP. Thus, if the NTP were issued on the earliest possible date of January 4, 1999, this work would have to be complete by October 20, 2000; if it were issued on the latest possible date of May 31, 1999, the work would have to be complete by March 16, 2001; and if it were issued on the date on which it was actually issued – May 17, 1999 – the work would have to be complete by March 2, 2001. “BODs” – beneficial occupancy dates – for completing each of the Areas were also specified. If the NTP were issued on May 17, 1999, the BOD for Area G would be March 2, 2001; for Area H, it would be March 30, 2001; for Area I, April 27, 2001; Area J, May 25, 2001; Area K, June 22, 2001; and Area L, July 20, 2001. RSAF, Exhibit 20. Mr. McGaughan understood that the schedule prescribed by PS 39 was “in the same framework” as the one prescribed by section 00800 of the original contract. Transcript at 701; *see also id.* at 170.

On December 22, 1998, the parties agreed to contract modification PS 98. Through this modification, GSA exercised its option to proceed with CC #3 as modified by PS 39. PS 98 noted that tenant fit-out allowances of \$5.9 million were included in the PS 39 amount of \$9,900,000, but said that authorization to proceed with TFO work was not yet granted and that “[t]he authorization for the funds in the tenant fit-out allowance . . . will be issued to the contractor through a separate action at a later date in accordance with the schedule in PS-39.” ASAF, Exhibit 50.

In March 1999, GSA forwarded to AMEC drawings and specifications for the TFO work and told the contractor that the cost of the work would be negotiated under CE 435. ASAF, Exhibits 54, 56, 58; Transcript at 124.

Two months later, GSA authorized AMEC to proceed with the full unencumbered scope of CC #3. The notice to proceed was issued on May 13, to take effect on May 17. ASAF, Exhibit 61.

In August 1999, AMEC sent to GSA its proposal in response to CE 435. The proposal included \$1,058,524 for general conditions costs for the period from March 2 to July 20, 2001. ASAF, Exhibit 82.

Three months later, in November, representatives of the parties met to negotiate that proposal. According to AMEC’s project manager, Mark McGaughan, and assistant project manager, Ben Davis, for the first time at that meeting, GSA officials raised the subject of general conditions costs for the TFO work. These AMEC witnesses testified that the agency’s project executive, Len Weiser, acknowledged that general conditions costs for the period from March 2 to July 20 were not included in PS 39 and should not be paid in the amount sought because AMEC had overstaffed the job. Mr. Weiser, the AMEC witnesses said, offered to pay about \$50,000, but they rejected that offer as grossly insufficient.

Transcript at 149, 152-54, 238-39; ASAF, Exhibits 101, 102 at 1. Mr. Weiser testified that he did not recall such a meeting and that he did not believe at any time that AMEC's general conditions for the period from March 2 to July 20 were not included in the equitable adjustment to the contract price made in PS 39. Transcript at 434-35.

Subsequent to the November 1999 meeting, the contract was modified to pay the costs which AMEC's subcontractors would incur to perform the TFO work, plus a commission to AMEC. Payment was authorized through five modifications, one of which (containing the bulk of the total amount) was bilateral and four of which were unilaterally issued by GSA. The amount provided for work by subcontractors was \$3,853,110; with a ten percent commission for AMEC added, the total for TFO work was \$4,238,421. Transcript at 163-64; ASAF, Exhibits 109, 119. The bilateral modification, PS 225, was issued on February 7, 2000. ASAF, Exhibit 119; Transcript at 687-88. It included this sentence: "The schedule: Area G complete (BOD) 3/02/01, Area H complete (BOD) 3/30/01, Area I complete (BOD) 4/27/01, Area J complete (BOD) 5/25/01, Area K complete (BOD) 6/22/01, Area L complete (BOD) 7/20/01." ASAF, Exhibit 119 at 1.

After GSA issued the full notice to proceed with the CC #3 work, AMEC prepared a schedule which showed work beginning on May 17, 1999, and ending on March 2, 2001. All base work in Areas G through L was included in this schedule. ASAF, Exhibit 211; Transcript at 179-85, 187-88, 194-96. GSA objected to the schedule on the ground that it did not include TFO work or base work which was to be coordinated with the TFO work. ASAF, Exhibit 73. After much discussion, in October 2000, to get the schedule approved, AMEC modified it in the way GSA requested. The approved schedule showed completion by July 20, 2001. Transcript at 198; RSAF, Exhibit 84.

The approved schedule shows TFO work occurring concurrently with base building work. RSAF, Exhibit 84. This was consistent with the way the work was actually performed. AMEC's Mr. McGaughan explained: "[T]hey need to be done concurrently It just makes sense." Transcript at 815; *see also id.* at 784-86.

[T]o do the tenant fit-out after I'm done with CC3 makes no sense because [if I were to do that] I would build it, it would be nice, it would have lights and it would have carpet under the base contract. And then I would have to come . . . in and rip this out and put in what's shown in the tenant fit-out, whereas if I put the lights that are shown in the base contract and the tenant fit-out in at the same time . . . , I don't have to rip it out.

Id. at 824-25.

AMEC was on the job throughout the year 2001. It had not completed the CC #3 base building work by March 2 of that year. On that date, there remained to be performed work in the basement, the cafeteria, the Mellon Auditorium, and the garage, and on the exterior of the building. Carmen Casile, the project manager for GSA's construction manager, Sverdrup/Turner, beginning in February 1999, estimated that the remaining work had a value of between \$1.25 and \$1.5 million. Transcript at 784-86. Beneficial occupancy of the last portion of the CC #3 part of the project, Area L, was not achieved until January 14, 2002. RSAF (GSBCA 16260), Exhibits 83, 88, 90, 96, 114, 115, 124, 127, 138.

GSA paid AMEC general conditions costs on some change orders on CC #3, including a small number which involved work which was performed prior to July 20, 2001. Transcript at 201-10, 350-55, 358-60; ASAF, Exhibits 177 at 6, 14 (unnumbered), 181 at 13, 31, 33 (unnumbered), 184 at 12-13 (unnumbered). Witnesses presented by GSA testified that while this is true, the agency had intended to pay general conditions costs only on changed work which was performed after July 20, 2001; it erroneously paid these costs on some change orders which were negotiated after that date because its negotiators did not realize that the orders involved work which had been performed earlier. Transcript at 339, 341, 360, 362, 364, 727-29.

GSA also paid AMEC general conditions costs on post-turnover tenant fit-out work (PTTFO) on the CC #2 part of the project. The PTTFO was different from the CC #3 TFO work in significant ways, however. It involved changes made after GSA accepted space constructed by AMEC, and the agency demanded that the contractor provide specific people to supervise that work. Transcript at 494-95, 525-26, 826.

On October 28, 2002, AMEC submitted to the contracting officer a claim in the amount of \$1,689,220 for general conditions costs it incurred between March 2 and July 20, 2001. RSAF, Exhibit 40. In the claim, the contractor stated: "The essence of AMEC's claim is that it was not compensated for its extended general conditions stemming from certain tenant work added by GSA to the Contract by modification and which additional tenant work extended AMEC's time of performance on the Contract from March 2, 2001 through July 20, 2001." *Id.* at 1. On July 22, 2003, AMEC filed with the Board an appeal from the contracting officer's deemed denial of that claim. The Board docketed this appeal as GSBCA 16233. The contracting officer issued a decision denying the claim on July 23, 2003. *Id.*, Exhibit 41. AMEC revised its claim on August 14, 2003, to \$1,582,769. *Id.*, Exhibit 44. The contracting officer responded the next day, "The Government's position has not changed." *Id.*, Exhibit 45.

Discussion

AMEC's claim is premised on the theory that when GSA amended the contract to include CC #3 TFO work, it extended the duration of contract work from March 2, 2001, to July 20, 2001. AMEC believes that because it did not seek general conditions costs for that period in its proposal responding to CE 66, and general conditions costs for that period were subsequently not included in contract modification PS 39 (which incorporated that proposal), it is now entitled to be paid those costs.

The theory on which the contractor's claim is based is incorrect. The contract provided at all times for the completion of base contract work and TFO work at the same times.

In the original contract's section 00800, "all vertically communicating mechanical, electrical, telecommunications facilities, fire and life safety systems, and attic level" for the CC #3 base building were to be completed within 881 calendar days of the date GSA issued its notice to proceed with CC #3. Area G base building and TFO work were to be completed by the same date. Base building and TFO work for each of the other designated areas, H through L, were to be completed at subsequent dates, each about a month later than the previous one, on the same basis as Area G: the two varieties of work – base building and TFO – were to be finished at the same time.

In March 1998, when GSA began to make more detailed its request for pricing for CE 66, it specified that CC #3 work would be performed in accordance with a similar schedule: "all vertically communicating mechanical, electrical, telecommunications facilities, fire and life safety systems, and attic level" for the base building were to be completed by one date; base building and TFO work for Area G were to be completed by that same date; and base building and TFO work for the other areas were to be completed together at subsequent dates.

The schedule contained in PS 39 was consistent with those of section 00800 and GSA's March 1998 letter: "CC #3 vertically communicating work & attic" was to be completed and beneficial occupancy of Area G achieved on one date, and beneficial occupancy of other areas was to be achieved in subsequent months. No distinction was made, as to beneficial occupancy dates for the various areas, between base building work and TFO work. AMEC's project manager, Mark McGaughan, understood that this schedule was "in the same framework" as the one prescribed by section 00800.

Later, when the contract was amended to pay AMEC for the costs of the TFO work, the schedule was restated as to beneficial occupancy dates for the various areas. These dates,

again making no differentiation between base building work and TFO work, were the same ones enunciated in PS 39, given the date on which GSA issued the full notice to proceed with CC #3 work. The beneficial occupancy dates ranged from March 2, 2001 (for Area G) to July 20, 2001 (for Area L).⁴

The designation of identical dates for completion of base building and TFO work in each of the areas was reasonable, given the synchronous way in which the two kinds of work were performed. Base building work included completely finished open plan office space. TFO work involved refinements to some of that space by the installation of partitions to create private offices, as well as the supply and installation of different paint, carpets, and lights. The two kinds of work were performed concurrently because, as AMEC's Mr. McGaughan testified, doing otherwise would have been senseless. It would have entailed demolishing base building work as soon as it was completed and replacing it with TFO work.

AMEC's position in opposing this reading of the contract is inconsistent. On the one hand, the contractor says that "vertically communicating mechanical, electrical, telecommunications facilities, fire and life safety systems" are the last base building work to be performed. "That work completes all of the CC #3 base contract work in areas G-L." Appellant's Reply Brief at 10. The conclusion proceeds from Mr. McGaughan's testimony that "[t]hose areas have to be complete, paint on the wall, dampers in, all of the thermostats in, every . . . piece of trim has to be on, so that we can run the systems and do the testing and balancing and do the commissioning for the entire building." Transcript at 194; *see also id.* at 41, 168-69, 606, 685-86. AMEC, following this understanding, planned to complete all of the base building work by March 2, 2001. *Id.* at 122, 127, 689, 712. But if the contractor is correct in thinking that the systems cannot be complete unless everything in the areas they serve – down to the paint, dampers, and trim – is also complete, the same analysis must apply to TFO work as to base building work. If AMEC was acting reasonably in believing that it could complete base building work in both CC #3 buildings by March 2, notwithstanding the contract's permitting it to finish that work as late as July 20, it would have to complete the TFO work in the buildings by March 2 as well; if it did not, the systems could not be properly tested, balanced, and commissioned.

⁴ We note that PS 39 provided that "[c]ost over and above [the allowances of \$5,900,000 specified] will entitle the contractor to time adjustment, if necessary." The cost for the TFO work which was encompassed by the allowances was eventually determined to be \$3,853,110. Because this amount is less than \$5,900,000, AMEC is not entitled to a time adjustment pursuant to this contract modification.

AMEC tries to dance around this difficulty by parsing paragraph 9 of section 00800 to differentiate between “substantial completion” of the systems and “final completion” of CC #3. Whatever the merits of this argument applied to paragraph 9 standing alone, it seems clear to us, considering all of the instances in which a schedule for CC #3 work was specified in the contract and modifications thereto, that this reading is strained. In PS 39 and a subsequent contract modification, both of which were accepted by AMEC, the words “final completion” are not in evidence; instead, the phrase “BOD,” or “beneficial occupancy date,” is used to specify the completion of the various areas. A construction project is considered ready for beneficial occupancy when it is substantially complete (occupied and used for the purposes for which it is intended). *R. J. Crowley, Inc.*, GSBCA 11080(9521)-REIN, 92-1 BCA ¶ 24,499, at 122,274 (citing *Joseph Morton Co.*, GSBCA 4876, 82-2 BCA ¶ 15,839, at 78,524, and *Lindwall Construction Co.*, ASBCA 23148, 79-1 BCA ¶ 13,822, at 67,795); see also *T. C. Bateson Construction Co. v. United States*, 319 F.2d 135, 138 (Ct. Cl. 1963) (definition in Air Force contract). Thus, the contract, read with its relevant modifications, made substantial completion the standard for finishing the work both on the systems and in each area.

Other essays by AMEC are not well taken, either. One is that when GSA told AMEC to use various allowances for TFO work in its CE 66 proposal, the allowance “for the remaining trades” included general conditions costs. Although Mr. McGaughan testified that he possessed this belief, he acknowledged that he never expressed it to the author of the letter which stipulated the allowances. We agree with that author, GSA’s Eric Albrecht, that the only reasonable meaning of the phrase is “exactly what it states.” According to the dictionary, a “trade” is “an occupation requiring manual or mechanical skill and training: a craft in which only skilled workers are employed.” *Webster’s Third New International Dictionary* 2421 (1986). The supervision of skilled workers, along with costs associated with that supervision, cannot reasonably be construed to be the performance of skilled work itself. Even if it could be so construed, AMEC has asserted its claim only on the basis of duration, a basis that we have rejected. It has not asserted that it incurred any particular costs to supervise TFO work (as opposed to base building work), so concluding that any particular costs would be deemed to be within an allowance for TFO work would be difficult.

Nor do we find that GSA’s payment of general conditions costs on some change orders involving CC #3 work performed before July 20, 2001, or on CC #2 PTTFO work, serves as a precedent for payment of such costs on CC #3 TFO work. The payment of general conditions costs on scattered change orders involving CC #3 work performed before July 20 was a mistake. GSA had established a general principle that such costs should be paid only on work performed after July 20, and individuals who negotiated the pre-July 20 change order prices occasionally erred in not realizing when work in question was performed. The payment of general conditions costs on CC #2 PTTFO work was for

supervision which was specifically requested and provided on tasks which were separate from and additional to base building and TFO work.

AMEC's last stab is that GSA should pay for the general conditions costs the contractor incurred between March 2 and July 20, 2001, because it has not previously paid for them and work other than CC #3 TFO work was ongoing during that period because of delay caused by the agency. Delay to the project was the subject of a separate docket, GSBCA 16183, which was settled and resolved through a stipulated award made by the Board on June 16, 2006. We have not considered delay on this project other than in making the stipulated award and have no basis on which to find that it did or did not occur, or that if it did, it applied to the period between March 2 and July 20. In any event, GSBCA 16233 does not involve a claim for delay, so we have no authority to adjudicate such a claim in the context of this case.

Decision

The appeal is **DENIED**.

STEPHEN M. DANIELS
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

ROBERT W. PARKER
Board Judge